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THE  
PRACTICE AND PROCEDURE  
OF  
ELECTION PETITIONS.

*By the same Author,*

**BUSHBY'S MANUAL**

OF THE

**PRACTICE OF PARLIAMENTARY  
ELECTIONS**

THROUGHOUT GREAT BRITAIN AND IRELAND.

**FOURTH EDITION,**

ADAPTED TO AND EMBODYING THE RECENT CHANGES IN THE LAW,

INCLUDING THE BALLOT ACT,

THE INSTRUCTIONS TO RETURNING OFFICERS IN ENGLAND AND  
SCOTLAND ISSUED BY THE HOME OFFICE, AND THE WHOLE  
OF THE STATUTE LAW RELATING TO THE SUBJECT.

THE  
LAW AND PRACTICE  
OF  
ELECTION PETITIONS;

*With an Appendix,*

CONTAINING

THE PARLIAMENTARY ELECTIONS ACT, 1868 ;  
THE GENERAL RULES OF PROCEDURE MADE BY THE  
ELECTION JUDGES IN ENGLAND, SCOTLAND,  
AND IRELAND ; FORMS OF PETITIONS,  
ETC. ETC.

BY

HENRY HARDCASTLE,



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THE  
PRACTICE AND PROCEDURE  
OF  
ELECTION PETITIONS.

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*Effect of Parliamentary Election Act, 1868, on  
jurisdiction of House of Commons.*

By passing the Parliamentary Election Act, 1868, the House of Commons resigned the right which it had formerly from time immemorial exclusively exercised of inquiring into all questions relating to the elections of its members.<sup>1</sup> No election may now be questioned except in accordance with the provisions of the Act.<sup>2</sup> The House, however, by passing that Act, merely relinquished the right of inquiring into the facts attending the election itself, it did not part with, but still retains (and on two occasions<sup>3</sup> since the passing of the Act has exercised) the right of inquiring into the

Effect of  
Parliamen-  
tary Elec-  
tion Act,  
1868, on  
jurisdiction  
of House of  
Commons.

<sup>1</sup> This right was first partially relinquished when the Grenville Act, 10 Geo. 3, c. 16, was passed; by that Act, the House, for the first time, "consented to submit the exercise of its privilege to a tribunal constituted by law." May's Parl. Pract. ed. 7, p. 642.

<sup>2</sup> S. 50, App. "The object of the Act," said Bovill, C. J., in *Pease v. Norwood*, L. R. 4 C. P. 246, "is to substitute a new tribunal for the trial of petitions in lieu of the committees of the House of Commons."

<sup>3</sup> Sir Sydney Waterlow was declared disqualified to sit as a member by a select committee in April, 1869, on the ground of his being a government contractor; and O'Donovan Rossa's election was declared void by the whole House, on Feb. 10, 1870, on the ground of his being a convicted felon.

question of the qualifications of its members. Also, the Act itself<sup>1</sup> permits petitions to be presented to the House by two or more electors complaining of the extensive prevalence of corrupt practices, which allegations, upon an address to both Houses of Parliament, may be made the subject of inquiry before commissioners appointed for the purpose.

*What Petition may complain of.*

What petition may complain

A petition presented under this Act must complain either of an undue return,<sup>2</sup> (under which expression is in a petition complaining of no return<sup>3</sup> or of a double return<sup>4</sup>) or of an undue election.<sup>2</sup>

*Form of Petition.*

Form of Petition

There is no precise form in which the petition must be expressed,<sup>5</sup> but every petition must contain a statement<sup>6</sup> of—

- (1) The right of the petitioners to petition;
- (2) The holding and result of the election;
- (3) The facts and grounds relied on to sustain the prayer.

<sup>1</sup> S. 56, App. xvii.

<sup>2</sup> S. 5, App. ii. The repealed Act of 11 & 12 Vict. c. 98, s. 2, also allowed petitions to be presented complaining "of the special matters contained in a return." See an example of such a petition in *Knaresborough case*, 2 Pcek. 383. It is presumed that such a petition might be presented to the Court of Common Pleas under this Act, but no such case has at present occurred.

<sup>3</sup> S. 52, App. xvi.

<sup>4</sup> S. 40, App. xiii.

<sup>5</sup> By s. 20 it is enacted that a petition shall be in such form and shall state such matters as may be prescribed. In rule 5, App. xxiii., a form is given which shows how it is intended to be drawn. See also *forms of petitions* given in the App., p. xlvi. For the various allegations contained in petitions presented under this Act, see vol. 1 of O. & H. Election Reports, index, tit. *Allegations in Petitions*; see also vol. 2. All the petitions that have been presented to the English Court of Common Pleas are kept at the Rule Office of the Common Pleas, Serjeant's Inn, Chancery Lane, where they may be seen on application.

Rule 2, App. xxii.

It must be divided into paragraphs,<sup>1</sup> which must be numbered consecutively, and each of which must be confined, as nearly as may be, to a distinct portion of the subject.<sup>2</sup> Evidence need not be stated in it,<sup>3</sup> that is to say, it is sufficient simply to allege a charge (for instance) of bribery, without stating when or where or by whom the act or acts of bribery were committed.<sup>4</sup> The petition must conclude with a prayer, as for instance, that A. B. should be declared elected, or that the election should be declared void, or that a return may be enforced.

Finally the petition must be signed by all the petitioners.<sup>5</sup> If this is omitted, it is presumed that the petition would be struck off the file. No question on this point has as yet arisen under the present Act, but under the old practice petitions were in several instances<sup>6</sup> rejected on the ground

<sup>1</sup> Scotch petitions must be set forth articulately in the form of a condescendence according to the rules and practice of the Court of Session in ordinary proceedings. See rule 2 of the Scotch rules, App., p. xxxvii.

<sup>2</sup> Rule 3. It is important to observe this rule, as in English and Irish petitions no costs will be allowed for drawing or copying a petition which is not drawn in compliance with it.

<sup>3</sup> Rule 6, as to England and Ireland, App. xxiii., and rule 1 of Additional Rules, dated Jan. 13, 1869, App. xlvi., as to Scotland.

<sup>4</sup> It was held in *Beal v. Smith*, L. R. 4 C. P., 148, that an allegation that "the respondent by himself and other persons on his behalf was guilty of bribery, treating, and undue influence before, during, and after the election, whereby he was and is incapacitated from serving in Parliament for the city of W." followed sufficiently, with regard to its form, the spirit and intention of this rule. See also *Greenock case*, L. R. 4 C. P. 150, note (1). In the *Norwich case*, O. & H. 9, it was held by Martin, B., that under an allegation of bribery "by himself and other persons on his behalf," it was competent for the petitioner to go into any act of bribery committed either by the respondent personally or by any agent of his.

<sup>5</sup> Parl. El. Act, s. 6 (1), and rule 4 as to England and Ireland, and rule 2 of Scotch rules.

<sup>6</sup> See *Hasleman case*, A.D. 1713, and *Wigan*, A.D. 1714, cited

that they were not actually signed by the petitioners themselves.

*Who may Petition.*

Who may petition.

The right of presenting a petition is now<sup>1</sup> confined to the following classes of persons :<sup>2</sup>—

- (1) Some person who voted, or had a right to vote at the election to which the petition relates.
- (2) Some person claiming to have had a right to be returned or elected at such election.
- (3) Some person alleging himself to have been a candidate at such election.

It is not exactly clear how far a petitioner's right to petition may be questioned as a preliminary matter; only one such objection has been taken since the passing of the Parliamentary Election Act, 1868, and on that no decision was come to.<sup>3</sup> Under the former practice, where the petitioners were voters, but had not voted,

in Roe on Elections, vol. 2, p. 113; and at page 114, Roe cites two resolutions of the House: (1) passed Nov. 14, 1689, "that all petitions presented to the House ought to be signed by the petitioners with their own hands, by their own names and marks." (2) Passed June 2, 1774, "that it is highly unwarrantable, and a breach of privilege of the House for any person to set the name of any other person to any petition to be presented to the House." In 1851, a committee of the House was appointed to enquire into the alleged forgery of the signature to the Aylesbury Election Petition. On June 4, 1851, they reported that Strutt, the person who had signed the petition, had had no authority given him to do so by the alleged petitioner, "and" (they went on to say) "your committee cannot but regard the conduct of Mr. Strutt as highly culpable, more especially as the signature to an election petition is the foundation of an important judicial proceeding, and by 11 & 12 Vict. c. 92, s. 2, it is enacted that 'the petition shall be subscribed by some person,' &c. The committee concluded their report by referring to the two above-mentioned resolutions of the House of Commons of 1689 and 1774.

<sup>1</sup> The same persons were permitted to petition under the repealed Act of 11 & 12 Vict. c. 98, s. 2.

<sup>2</sup> Parl. El. Act, s. 5, App. ii.      <sup>3</sup> *Youghal*, O. & H. 291.

they were in several cases<sup>1</sup> called upon in the first instance to prove their right to vote; and in one case<sup>2</sup> it was held that persons who voted for the sitting member could not afterwards petition against him. Again, where the petitioner was "a person claiming to have a right to be returned," it was formerly held<sup>3</sup> that he must be prepared in the first instance to prove that he was not ineligible or disqualified, and consequently unable to take his seat in Parliament. If the petitioner alleged himself to have been a candidate,<sup>4</sup> it was formerly held<sup>5</sup> that he had a *prima facie* right to petition, unless his disqualification was obvious and incontestable.

*Petition to whom Presented.*

We have seen<sup>6</sup> that petitions may still in certain cases be presented to the House of Commons; but all petitions complaining of an undue return, or an undue election of a member, must now be presented either to the Court of Common Pleas at Westminster,<sup>7</sup> or Dublin, or the Inner House of the Court of Session in Scotland,<sup>8</sup> according as the petition relates to a constituency in England, Ireland, or Scotland. These several courts, as soon as the petition is presented, will have the same powers, jurisdiction, and authority with reference to it, and to the proceedings thereon, as they would have if such petition were an ordinary cause within their jurisdiction;<sup>9</sup> and all

<sup>1</sup> *Lisburn, W. & B.* 222; *North Cheshire*, 1 P. R. & D. 215; *Herefordshire*, 1 Peck. 210.

<sup>2</sup> *Herefordshire*, 1 Peck. 210.

<sup>3</sup> See Warren on Elections, 313, and Roe on Elections, 123—25, where all the cases on the point are collected.

<sup>4</sup> The word "candidate" is defined in s. 3 of the Act, App. ii.

<sup>5</sup> *Montgomery*, P. & K. 169 n.; *Londonderry*, W. & B. 214.

<sup>6</sup> *Ante*, p. 1, note (3).

<sup>7</sup> Parl. El. Act. s. 5, App. ii.

<sup>8</sup> *Ib.* s. 58, App. xviii.

<sup>9</sup> *Ib.* s. 2, App. i. Under this section it has been held that

interlocutory questions and matters relating to it may be heard and disposed of before a judge at Chambers in the same manner as in an ordinary proceeding in a superior court.<sup>1</sup>

*Grounds relied on in Petitions.*

What grounds have been relied on in petitions.

The ordinary grounds for petitioning are on account of bribery, treating, or undue influence; but in addition to these the following grounds have been relied upon in petitions:—

(1) Irregularity on the part of the returning officer in the conduct of the election.

In the *Wexford case*, Law Reports, 3, Irish Common Law, 612, it was held that if a poll has once been demanded, the returning officer cannot make any return whatever until the poll has been taken.<sup>2</sup>

In the *Longford case*, 2 O. & H. 6, there were allegations praying the election might be declared void, on the ground that the returning officer had held the election on a wrong day. No decision, however, was come to as to this allegation, as the election was declared void on other grounds.

(2) Notorious and systematic corruption and unlawful practices carried on by the agents, &c., of the respondent.

Under this allegation it was held that evidence of general bribery, treating, and undue influence might be given.—*Blackburn case*, O. & H. 201.<sup>3</sup>

a judge at chambers has power to grant a commission to examine a witness who is ill, *Odgen v. Sidebottom*, 19 L. T. N. S. 703; or to order inspection of documents, *Coventry*, 19 L. T. N. S. 742. See also *Stafford*, 20 L. T. N. S. 231.

<sup>1</sup> Rule 44 (English and Irish), App. xxx., and rule 24 (Scotch), App. xli.

<sup>2</sup> This point has been set at rest by the Ballot Act, 1872, s. 1, which enacts that if there are more candidates nominated than there are vacancies to be filled, the election shall stand adjourned and a poll be taken.

<sup>3</sup> Evidence of general intimidation is not, it seems, ad-

## (3) Rioting.

Under this allegation it must be proved the rioting existed to such an extent as to deter a man of ordinary reasonable nerve from going to the poll.—*Nottingham case*, O. & H. 246. See also *Drogheda case*, O. & H. 252.<sup>1</sup>

(4) Irregularities and confusion at the polling booth, and improper conduct on the part of the poll clerk.

As to what must be established under this allegation in order to avoid an election, see *Warrington case*, O. & H. 42.

(5) Improper position of the polling booth (in Scotland).—*Greenock case*, O. & H. 248.

(6) Corrupt payment at one election of illegal expenses incurred at previous election.—*Coventry case*, O. & H. 97, 98.

(7) Corrupt payment by one candidate to another to purchase his influence.—*Coventry case*, O. & H. 97—104; *Belfast case*, O. & H. 285.

(8) Fraud committed by agent in instigating personation of voters.—*Coventry case*, O. & H. 105.

(9) Hiring, engaging, and paying money for conveyances for the purpose of conveying voters to the poll.<sup>2</sup>—*Salford case*, O. & H. 133.

(10) Employing as agents scheduled persons.—*North Norfolk case*, O. & H. 236, 238; *Norwich case*, 2 O. & H. 40.

(11) Bribery at a preliminary test ballot.—*Bristol case*, 2 O. & H. 27.

(12) Bribery at a previous election which had been declared void.<sup>3</sup>—*Norwich case*, 2 O. & H. 38.

missible under the ordinary allegation of undue influence within the meaning of 17 & 18 Vict. c. 102, s. 5, *Salford case*, O. & H. 236; *Cheltenham case*, O. & H. 64.

<sup>1</sup> This petition is set out at length in the Appendix, p. lix.

<sup>2</sup> In the *Stalybridge case*, 19 L. T., N. S. 660, it was sought at chambers to strike out an allegation as to this, on the ground that though it might be the subject of an indictment, it could not avoid the seat; but leave to do so was refused by Willes, J.

<sup>3</sup> In *Stevens v. Tillett*, L. R. 6, C. P. 147, a rule was granted

(13) Payment of a bribe after an election and within twenty-eight days of the presentation of petition.—See *Brecon case*, 2 O. & H. 43.

*How presented.*

As to English and Irish petitions the presentation is, by leaving it at the office of the Master of the Common Pleas,<sup>1</sup> and, as to Scotch petitions, by lodging it with the prescribed officer in the manner prescribed in rule 1 of the Scotch rules.<sup>2</sup> The officer or his clerk upon receiving a petition shall give (if required) a receipt in the form prescribed.<sup>3</sup> Together with English and Irish petitions there is to be left with the master a copy of the petition (for him to send to the returning officer, pursuant to s. 7 of the Act<sup>4</sup>), and also the name and address (which must be within three miles of the General Post Office) of some attorney or agent whom the petitioner authorises to act for him.<sup>5</sup>

How presented.

On receiving the petition, the prescribed officer of the court<sup>6</sup> must send a copy of it to the returning

to show cause why an allegation to this effect should not be struck out, on the ground that the matter alleged might have been given in evidence in support of the recriminatory case in the previous petition, in which the respondent Tillett was petitioner, and claimed the seat. This rule, after an elaborate argument, was discharged.

<sup>1</sup> Sec. 6 (3) and rule 1. As to England, the Chief Justice of the Common Pleas is to nominate the Master at whose office the petition is to be left. See rule 1 of the English rules, and s. 27 of the Act.

<sup>2</sup> The prescribed officer for Scotland is to be such one of the principal clerks of the Court of Session as is selected by the Lord President. See s. 58 (12) of the Act.

<sup>3</sup> Rule 1 as to England and Ireland, App. xxiii, and sch. A. of Scotch rules as to Scotland, App. xliv.

<sup>4</sup> Rule 1 of English and Irish rules, App. xxii. There is no such rule as to Scotland.

<sup>5</sup> Rule 9 of English and Irish rules, App. xxiv., and rule 11 of Scotch rules, App. xxxix.

<sup>6</sup> As to who is the prescribed officer for England and Ireland, see s. 27, App. ix., and as to Scotland, s. 58 (12), App. xix.

officer of the place to which the petition relates, and such returning officer is forthwith to publish it.<sup>1</sup> The costs of such publication are, in English and Irish cases, to form part of the general costs of the petition.<sup>2</sup>

*Service of Petition.*

The petitioner must also, within five days of presenting the petition,<sup>3</sup> give notice of the presentation to the respondent,<sup>4</sup> he must also give notice of the nature of his proposed security, and together with these notices, he must send to the respondent a copy of the petition.<sup>5</sup> If the respondent has named an agent, or given an address,<sup>6</sup> the service of the petition may be by delivering a copy of it to the agent named, or by posting it to him in a registered letter.<sup>7</sup> In other cases the service must be personal<sup>8</sup> on the respondent, if he can be found, and if not, notice of the petition must be given to his agent for election expenses, and then a judge may, on application, make such order as he may think reasonable as to whether anything further

<sup>1</sup> S. 7. There is no manner specified in this Act for publishing notices, &c. As to publishing notices under the Ballot Act, see rule 46 of that Act.

<sup>2</sup> Rule 12 (English and Irish), App. xxv.

<sup>3</sup> Rule 13 (English and Irish), App. xxv. and rule 5 (Scotch).

<sup>4</sup> Non-compliance with this provision was held to be a mere formal omission and not such as ought to prevent a petition from being further proceeded with; see rule 60 (English and Irish), and rule 35 (Scotch), commented on in *Young v. Figgins*, 19 L. T. N. S. 499.

Parl. El. Act, ss. 8, 21.

<sup>6</sup> This he is empowered to do by rule 10 (English and Irish) and rule 12 (Scotch); and by rule 59 (English and Irish), any agent appointed either by the petitioner or respondent is forthwith to give to the master written notice of his appointment.

<sup>7</sup> Rules 14 and 59 (English and Irish), and rules 13 and 14 (Scotch).

<sup>8</sup> If the returning officer is made a respondent under s. 51 of the Act, it appears that he ought to be personally served with the petition, as rule 10 as to the appointment of an agent only relates to persons returned as members.

should be done to inform him that he is being petitioned against.<sup>1</sup>

*Evasion of Service.*

In case of  
evasion of  
service.

In case of evasion of service, the sticking up of a notice in the master's office, stating that a petition has been presented, the name of the petitioner, the prayer, and the nature of the proposed security, will be deemed equivalent to personal service, if so ordered by a judge.<sup>2</sup>

*When Presented.*

When pre-  
sented.

A petition complaining of an undue return, or an undue election on account of corrupt practices<sup>3</sup> before or during the election, must be presented within twenty one days<sup>4</sup> exclusive of Sundays, Christmas Day, Good Friday, or any public fast or thanksgiving,<sup>5</sup> after the return<sup>6</sup> has been made to

<sup>1</sup> Rules 14 and 59 (English and Irish), and rules 13 and 14 (Scotch).

<sup>2</sup> Rule 15 (English and Irish), App. xxv., and rule 13, (Scotch), App. xxxix.

<sup>3</sup> As to the meaning of "corrupt practices" see s. 3 of Parl. El. Act and s. 24 of Ballot Act; these two Acts are to be construed as one as far as regards parliamentary elections. Ballot Act, s. 27.

<sup>4</sup> Parl. El. Act, s. 6 (2). Under the former practice the word "days" as used in the sessional order which prescribed, within what time a petition was to be presented, meant parliamentary days. So that a petition might be presented at any time during the fourteenth day that the House was sitting, though it was after 12 p.m. Rogers, ed. 10, p. 420.

<sup>5</sup> S. 49, App. xvi. See *Pease v. Norwood*, L. R. 4 C. P. 237.

<sup>6</sup> The day on which the return is made to the clerk of the crown must not be confounded with day on which the writs are said to be returnable. As to this the following paragraph appeared in the *Times* of December 11, 1868:—"A statement having been circulated that Mr. Justice Blackburn had expressed an opinion that under the Parliamentary Elections Act petitions complaining of undue returns could be presented within twenty-one days after the 10th instant, on which day the writs for the new Parliament were returnable, we have authority to state that no such opinion has been judicially given; and that having reference to the Acts 10th

the clerk of the crown. If it question the election on the ground of bribery committed *after* the return, the petition may be presented within twenty-eight days after the date of such payment,<sup>1</sup> but such a petition must be confined entirely to the charge of *bribery* alleged to have been committed within the twenty-eight days,<sup>2</sup> and cannot be presented on account of any other kind of corrupt practice.<sup>3</sup>

and 11th Will. III. c. 7 and 25th Geo. III. c. 84, the learned judge, as at present advised, considers that the twenty-one days are to be computed from the day of the actual return to the crown office."

Neither must the day on which the return is made to the clerk of the crown be confounded with the day on which the return is amended in consequence of the election of a member having been declared void. In *Waygood v. James*, L. R. 4 C. P. 361, a petition was presented against the return of James (who had been seated by the judge on petition) within twenty-one days after the return had been amended by order of the House of Commons by erasing the name of Cox, the unseated member, and inserting that of James in its place; upon a motion to strike the petition off the file, it was held, that a petition can only be presented within twenty-one days after the return to the clerk of the crown. This decision was in accordance with the former practice. On Feb. 4, 1854, a petition was presented to the House by two electors of Peterborough, praying to be allowed to present a petition against the return of Mr. Hankey (who was seated on petition in Aug. 1853) on the ground that inasmuch as the resolution of the committee had been come to only five days before the prorogation of Parliament, the parties had not had an opportunity of presenting a petition within fourteen days after the return of Mr. Hankey. But a motion made to this effect was negatived without a division. Hans., vol. cxxx. p. 219, and 2 P. R. & D. 295.

<sup>1</sup> S. 6 (2), App. iii.

<sup>2</sup> In the *Brecon case* (*Times* newspaper, April 22, 1871), Lush, J., ordered the words "before or during" to be struck out of the petition.

<sup>3</sup> In the *Southampton case*, 1 O. & H. 223, Willes, J., said: "There is a very curious provision in the Parl. El. Act, 1868, s. 6 (6), as to presenting petitions after the twenty-one days have gone by. It is to be not in case of *any* corrupt practice coming to the knowledge of the petitioner, but in respect of bribery only." The allegations, however, in the *Brecon case*, 2 O. & H. 43, were not confined to bribery only.

*Amendment of Petition.***Amendment of petition.**

It appears that after the expiration of the twenty-one days no amendment (at any rate no material one) of the petition will be permitted, as such a proceeding would be, in fact, the same as presenting a new petition. This point has been raised in several cases,<sup>1</sup> but has not, as yet, been specifically decided.

*Security for Costs.***Security for costs.**

At the time of the presentation of the petition, or within three days after, security for costs has to be given by the petitioner "for all costs, charges, and expenses that may become payable by him,"<sup>2</sup> to an amount of one thousand pounds, and may be given either by recognizance to be entered into by not more than four sureties, or by a deposit of money, or partly in one way and partly in the other.<sup>3</sup>

**For whose benefit security is given.**

This security is to be given for the benefit of two classes of person, viz.—

- (1) Any person summoned<sup>4</sup> as a witness by the petitioner.
- (2) The member whose election or return is complained of.

In the former Act<sup>5</sup> it was provided that the security was to be for the benefit not only of these two classes of persons, but also for any "other the party complained of in the petition, or for any person who might be admitted to defend such petition." As these last mentioned classes of persons are not named in this Act it appears

<sup>1</sup> *Youghal case*, O. & H. 295; *Stevens v. Tillett*, L. R. 6 C. P. 147, *per O'Malley*, Q.C., *arguendo*; *Staleybridge*, 19 L. T. N. S. 660, where leave to strike out an irrelevant allegation was refused.

<sup>2</sup> Parl. El. Act, s. 6 (4), App. iii. By s. 35 a substituted petitioner is subject to the same liabilities as the original petitioner.

<sup>3</sup> *Ib.* s. 6 (5), App. iii.  
<sup>4</sup> It seems doubtful from the observations of Willes, J., in the *Westbury case*, O. & H. 49, whether these words, "summoned as a witness," would apply to a witness who is called without having been subpoenaed.

<sup>5</sup> 11 & 12 Vict. c. 98, s. 3.

doubtful whether such persons would now have any claim upon the security given for costs. Therefore if the returning officer is made a respondent under s. 51, it does not seem that he would be entitled to come upon the security for his costs.

If security is given by deposit of money, the money must be paid into the bank of either England, Scotland, or Ireland, according to which country the petition relates, to the account of "the Parliamentary Election Act, 1868, Security Fund,"<sup>1</sup> and a bank receipt or certificate for such payments must be left at the Master's office.<sup>2</sup> This receipt or certificate must be filed by the Master, and the amount of it entered in a book which will be open to the inspection of all parties concerned.<sup>3</sup> In England and Ireland<sup>4</sup> this money may be drawn upon from time to time by the Chief Justice of the Common Pleas. In England (but there is no such rule as to Ireland) all claims either at law or in equity to this money must be disposed of by the Court or a judge,<sup>4</sup> and when the same is no longer needed as security, it may be returned or otherwise disposed of, as justice may require, by rule of the Court or a judge,<sup>5</sup> to be made after proof that all just claims have been satisfied.<sup>6</sup> The only provision as to money deposited as security in a Scotch petition is, that it shall stand as security for the purpose for which security is required by the Act, subject to the order of the election judges or either of them or of the Court.<sup>7</sup>

If security is given by recognizance, the re-<sup>By recognizance.</sup>

<sup>1</sup> Rule 16 of English and Irish rules, App. xxv., and rule 3 of Scotch rules, App. xxxvii.

<sup>2</sup> Rule 17 of English and Irish rules, App. xxv., and rule 3, of Scotch rules, App. xxxvii.

<sup>3</sup> Rule 16, App. xxv.  
<sup>4</sup> Rule 1 of Additional General Rules, dated March 25, 1869, App. xxxvi. See *Adams v. Gower*, Weekly Notes, Feb. 5, 1870, p. 38.

<sup>5</sup> Rule 2 of ditto, App. xxxvi.  
<sup>6</sup> Rule 3 of ditto, App. xxxvi. See *Boston case*, 21 L. T. N. S. 645. As to claims to be made by substituted petitioners, see Parl. El. Act, s. 35.

<sup>7</sup> Rule 3 of Scotch rules, App. xxxvii

cognizance must, in the case of English and Irish petitions,<sup>1</sup> contain the name and usual place of abode of each surety, with such sufficient<sup>2</sup> description as shall enable him to be found or ascertained. It may be in the form given in rule 19, and must be left at the Master's office in the same manner in which a petition is left under rule 1.<sup>3</sup> It has been held<sup>4</sup> that it is not obligatory, under rule 28, as it was under the former Act,<sup>5</sup> to send an affidavit with the recognizance, as to the surety being worth £1,000, that the recognizance need not be stamped,<sup>6</sup> and that it is immaterial whether it is said to be acknowledged or subscribed.<sup>7</sup> Under the former Act it was held by the examiner of recognizances that it is immaterial if the recognizance misdescribes the place to which the petition relates, as long as it follows the description in the petition itself.<sup>8</sup> This decision would probably be now followed, especially as by rule 60 it is provided that no proceeding under the Act shall be defeated by any formal objection.

If acknowledged either in London or Dublin, it may be acknowledged either before a judge at chambers, or the Master,<sup>9</sup> and if in the country, before a magistrate, having jurisdiction in the place where the recognizance is sworn.<sup>10</sup> There

<sup>1</sup> Rule 19 (English and Irish), App. xxvi.

<sup>2</sup> In *Pembroke case*, 19 L. T. N. S. 501, it was held that if the affidavit, under rule 28, is left with the recognizance, it is sufficient merely to give the name and address of a surety without further description.

<sup>3</sup> Rule 20 (English and Irish), App. xxvi.

<sup>4</sup> *Athlone case*, 19 L. T. N. S. 530. <sup>5</sup> 11 & 12 Vict. c. 98, s. 4.

<sup>6</sup> There is no enactment in the Parl. El. Act or rules as to whether recognizances should be stamped or not, like that in the repealed Act of 11 & 12 Vict. c. 92, s. 106.

<sup>7</sup> Under 11 & 12 Vict. c. 98. See Warren's Election Law, p. 298.

<sup>8</sup> In London (or Dublin) a recognizance may not be acknowledged before a magistrate; *Young v. Figgins*, 19 L. T. N. S. 499.

<sup>9</sup> The expression "a magistrate in the country," means a magistrate having jurisdiction in the place where the recog-

may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.<sup>1</sup> If in the case of a Scotch petition the security is by bond of caution, such bond must be lodged in the hands of one of the principal clerks of session, and must be, as nearly as possible, in the form prescribed in schedule C of the Scotch rules,<sup>2</sup> also the sufficiency of such bond must be attested to the satisfaction of the clerk, as in the case of judicial bonds of caution, according to the practice of the court in similar cases.<sup>3</sup>

As it is enacted by section 22, that if two or more candidates are made respondents to the same petition, such petition shall be deemed to be a separate petition against each respondent, it appeared to be a fair conclusion to come to that in the case of a petition against more than one respondent, £1,000 ought to be deposited by the petitioner for each respondent. It was decided,<sup>4</sup> however, after an elaborate argument in the Court of Common Pleas, that this was not the intention of the legislature, and that, however many respondents there were, security need not be given for more than one thousand pounds for each petition. This was so under the former practice; and as the question appeared to be open to doubt, the court decided to adhere to the practice.<sup>5</sup>

#### *Objections to Recognizance.*

Where the security is given, either wholly or partially, by recognizance, the respondent may within five<sup>6</sup> days from the date of the service of

nizance is sworn; *Athlone case*, 19 L. T. N. S. 530. See also, *Carnarvon*, B. & Aust. 552; *New Reps.*, 2 P. R. & D. 191.

<sup>1</sup> Rule 18 of English and Irish rules, App. xxvi.

<sup>2</sup> Rule 3 of Scotch rules, App. xxxvii.

<sup>3</sup> Rule 4 of Scotch rules, App. xxxviii, and Parl. El. Act, s. 58 (4), App. xviii. <sup>4</sup> *Pease v. Norwood*, L. R. 4 C. P. 235.

<sup>5</sup> *Per Bovill*, C. J., at p. 247.

<sup>6</sup> Rule 21 (English and Irish), App. xxvii., rule 6 (Scotch), App. xxxviii.

the notice of the petition, and of the nature of the security, serve upon the petitioner's agent (or, if he has not named an agent, stick up at the Master's office<sup>1</sup>) written objections to such recognizance on one or more of the following grounds:<sup>2</sup>

(1) That the sureties, or any of them, are insufficient.<sup>3</sup>

(2) That a surety is dead.

(3) That a surety cannot be found or ascertained for want of sufficient description in the recognizance.<sup>4</sup>

(4) That a person named in the recognizance has not duly acknowledged the same.

When and  
how ob-  
jections are  
removed.

An objection on any of these four grounds, if allowed, may be removed by a deposit, within five days of the date of the order,<sup>5</sup> of such sum of money as may be deemed necessary to make the security sufficient. If the petitioner fails to make this deposit, the petition falls to the ground.<sup>6</sup>

Making  
objections  
other than  
those men-  
tioned in  
the Act.

There is nothing in the Act<sup>7</sup> to prevent objections being made to the recognizance on other grounds besides those specified in section 8; and it seems that objections on other grounds need not necessarily be made within the prescribed five

<sup>1</sup> Rule 9 (English and Irish), App. xxiv., rule 11 (Scotch), App. xxxix. <sup>2</sup> Parl. El. Act, s. 8, App. iii.

<sup>3</sup> In *Pease v. Norwood*, L. R. 4 C. P., Bovill, C. J., discussed the meaning of this word 'insufficient,' and at p. 253, Byles, J., said, "The language of s. 8 would have been more accurate if the word 'incompetent' or 'improper' had been used instead of 'insufficient.'"

<sup>4</sup> As to what is a sufficient description of a surety within the meaning of this rule, see *Pembroke case*, 19 L. T. N. S. 501. There it was decided that if the name and address of a surety are given, that is sufficient, in the absence of any evidence to the contrary. This decision is in accordance with that of the Examiner of Recognizances under the repealed Act of 11 & 12 Vict. c. 98. See Warren on Election Committees, p. 297.

<sup>5</sup> Rule 26 (English and Irish), App. xxvii. rule 8 (Scotch), App. xxxviii. <sup>6</sup> S. 9, App. iv.

<sup>7</sup> In the repealed Act of 11 & 12 Vict. c. 98, s. 15, it was enacted that no objection to recognizances could be taken other than those mentioned in s. 13 of that Act.

days, but may be made at any reasonable time after the presentation of the petition.<sup>1</sup> If an objection on any other ground is allowed, as, for instance, if it be held that the security given is not only insufficient but absolutely null and void, it appears (though it is not altogether clear) that section 9, which permits objections to be remedied by a deposit of money, does not apply to such objections, but only to those mentioned in section 8,<sup>2</sup> and that such an objection would be incurable. This point was raised in the case of *Pease v. Norwood*, L. R. 4 C. P. 235, where one of the petitioners had entered into the recognizance, and it was objected that such recognizance was null and void, and not merely insufficient; consequently it was argued that the objection was incurable, and that the petition must fall to the ground. The court, however, after some hesitation, held that this objection was an objection to the sufficiency and not to the validity of the recognizance, and that consequently it was curable by a deposit of money. They thus avoided the necessity of having to decide whether an objection to the validity of a recognizance would be curable or not; but they appeared to incline to the opinion that it would be incurable.<sup>3</sup>

<sup>1</sup> In the *Oldham* case, 19 L. T. N. S. 501, a summons was taken out by the respondents more than five days after the presentation of the petition, objecting that the security was wholly null and void, and that no security had been given within the meaning of the Parl. El. Act. Willes, J., said that rule 21 applied only to objections under s. 8, and he should probably consult the other judges upon the question of making a new rule, so as to allow objections which did not fall within s. 8 to be made within a reasonable time. As the present application had, in his opinion, been made within a reasonable time he should hear it.

<sup>2</sup> In *Pease v. Norwood*, L. R. 4 C. P. p. 256, Montague Smith, J., said, "The legislature specified the grounds of objection which, if made, might be amended, and left open what was to happen if the recognizance was to be invalid on other grounds."

<sup>3</sup> "The reason why no power was given in s. 8 to object to

Objections  
by whom  
heard.

Objections to the security are to be heard and decided, in English and Irish cases, by the master, subject to appeal within five days to a judge,<sup>1</sup> and such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the master or judge may think fit.<sup>2</sup> In Scotch cases, objections are to be heard and decided by the principal clerk,<sup>3</sup> and if an objection is sustained by him, he is to state the amount of deposit required to make the security sufficient, it being in the power of the party to appeal to the election judges, or either of them, as regards the amount ordered to be deposited.<sup>4</sup>

Costs of  
hearing  
objections.

The costs of hearing and deciding these objections are, in English and Irish cases, to be paid as ordered by the master or judge, and if no such order is made they are to form part of the general costs of the petition.<sup>5</sup> If, however, the petitioner's sureties omit to leave with the master, together with the recognizance, an affidavit stating that they are worth as much as the amount of their recognizance (which affidavit may be in the form given in rule 28, but it is not, as we have seen,<sup>6</sup> obligatory to make it), the costs of hearing objections as to the sufficiency of a surety will in any event be payable by the petitioner.<sup>7</sup> There is no such rule as this as to Scotch cases.

Estreating  
recogni-  
zance.

If any petitioner neglect or refuse, for six months after demand, to pay to any person summoned as a witness on his behalf, or to the respondent, any

the validity of the security generally, seems to be that the legislature meant to allow an amendment in certain specified cases only." *Per Smith, J., Pease v. Norwood*, L. R. 4 C. P. 256.

<sup>1</sup> Rule 23 (English and Irish), App. xxvii.

<sup>2</sup> Rule 24 (English and Irish), App. xxvii.

<sup>3</sup> Rule 7 (Scotch), App. xxviii.

<sup>4</sup> Rule 8 (Scotch), App. xxviii.

<sup>5</sup> Rule 27 (English and Irish), App. xxvii.

<sup>6</sup> *Ante*, p. 14.

<sup>7</sup> Rule 28 (English and Irish), App. xxv.

sum certified to be due for costs, charges, or expenses, and if such neglect or refusal be proved to the satisfaction of the court of elections within one year after such demand, every person who has entered into a recognizance relating to the petition shall be held to have made default in his recognizance, and the prescribed officer shall thereupon declare such recognizance to be forfeited, and it shall then be dealt with in the way in which forfeited recognizances are usually dealt with.<sup>1</sup>

*Particulars.*

Evidence, as we have seen,<sup>2</sup> need not be stated in a petition, but, in order to prevent surprise and unnecessary expense, and to insure a fair and effectual trial, it is provided by the rules<sup>3</sup> that the court or a judge may order particulars to be given with regard to the charges contained in a petition in the same way, in England and Ireland,<sup>4</sup> as in ordinary proceedings in the Court of Common Pleas, and upon any terms that they think fit as to costs or otherwise. As to Scotland,<sup>5</sup> it is expressly provided that no evidence shall be received at the trial except as to matters within the particulars without the leave of the court or a judge, and then only upon such conditions as may be thought fit.

Granting particulars.

<sup>1</sup> Parl. El. Act, s. 42, as to England and Ireland, and s. 58 (18), as to Scotland. As to the right of witnesses who have been summoned by the judge to attend recognizances, see *ante*, p. 12.

<sup>2</sup> *Ante*, p. 3.

<sup>3</sup> Rule 6 (English and Irish), App. xxiii, and as to Scotland, additional rule 1, App. xlvi.

<sup>4</sup> The Scotch rule merely says that a written statement of the particulars is to be lodged with the principal clerk.

<sup>5</sup> Additional rule 2. As a matter of fact this provision usually made part of the judge's order for particulars in English and Irish cases. See order of Willes, J., in the *Salford case*, 19 L. T. N. S. 500, cited *infra*, p. 20.

Form of  
order for  
particulars.

The usual order made for particulars under rule 6 (English and Irish), is as follows:—

“I do order that the petitioners shall three days before the day appointed for trial, leave with the master, and also give the respondents or their agents, full particulars in writing of all persons alleged to have been treated, of all persons alleged to have been unduly influenced, of all persons alleged to have been conveyed to the poll or their expenses thereof paid. And that no evidence shall be given by the petitioners of any objection not specified in such particulars except by leave of a judge upon such terms (if any) as to amendment, postponement, and payment of costs as may be ordered. And I further order that the petitioners shall, in four days from this day, leave with the master and give the respondents particulars in writing of the nature of the corrupt or illegal practices charged in general terms in the petition, otherwise the petition shall be restricted to the charge the nature of which is specified in the petition, and that in the event of such particulars of the nature of the corrupt or illegal practices in the petition alleged in general terms being given, the petitioners shall, three days before the day appointed for trial, leave with the master, and give the respondents particulars of the person or persons alleged to have been affected thereby, subject to the same conditions as above provided in case of bribery or other specific charge.”

An order in this form was made by Willes, J., in one of the first cases in which particulars were applied for,<sup>1</sup> and it has been substantially followed in all subsequent cases.<sup>2</sup>

What information need not be given

Under such an order as this it has been held that it is not necessary to give the names of the

<sup>1</sup> This order was first made by Willes, J., in the *Salford case*, 19 L. T. N. S. 500. A similar order to this was upheld by the court in *Beal v. Smith*, L. R. 4 C. P., 145. See also judgment of the Scotch judges on this matter, and the order for particulars made by them in the *Greenock case*, cited L. R. 4 C. P. 150, note (1).

<sup>2</sup> A similar order was also made by Quain, J. (*Times* newspaper, Dec. 21 and Dec. 24, 1872) in the Municipal Election Petitions under rule 6 of the Rules for Municipal Election Petitions, which rule is identical with rule 6 of the Parl. E' Rules.

places where the treating is alleged to have taken <sup>under this</sup> place, but only the names of the persons treating <sup>order.</sup> and treated,<sup>1</sup> neither can particulars as to items in the accounts filed by the respondent's agent, pursuant to 26 Vict. c. 29, s. 3, be asked for.<sup>2</sup> Neither is it necessary to put into the particulars the names of witnesses who are to be called to prove a general system of corruption.<sup>3</sup> It has once been held that the names of persons bribed and treated, need not be put into separate lists,<sup>4</sup> but this decision has not since been acted upon.<sup>5</sup>

If an order for particulars is not properly complied with, the petitioners, although successful, will be liable to be saddled with costs; as to this the observations of Blackburn, J., are worthy of attention. He said in his judgment in the *Hereford case*, O. & H. 196, as follows:—"In making the rules we had this before us, that it was the very essence of justice and fair play that every man who was accused of anything should have due and sufficient notice of what it was he was accused of, and of that only, so that his attention should not be distracted to immaterial matters. . . . . Generally particulars have been used very much as if they were intended to give no information at all, and the only way to check that is to say that where that is done, we shall follow the spirit of the

<sup>1</sup> *Bradford, O. & H.* 38; *Lynn, O. & H.* 207.

<sup>2</sup> *Stafford*, 20 L. T. N. S., 237. In this case Blackburn, J., intimated that possibly such information as this might be obtained by interrogatories which the jurisdiction of the court conferred by s. 2, has apparently made administrable.

<sup>3</sup> *Beverley, O. & H.* 143-145. In the *Drogheda case*, 19 L. T. N. S. 528, an order was refused (but without costs) asking for the names of persons alleged to have delivered inflammatory speeches, also for the names of Catholic priests charged with spiritual intimidation. In the *Galway County case*, *Times* newspaper, March 15, 1872, Keogh, J., refused particulars of the names of the witnesses who were to prove spiritual intimidation.

<sup>4</sup> *Bradford*, 19 L. T. N. S. 661.

<sup>5</sup> *Horsham*, 20 L. T. N. S. 180.

Act, which says (s. 41) that the costs shall be in the discretion of the judge, who shall direct how they shall be allotted, bearing in view, whether or no there has been useless expense and vexation caused."<sup>1</sup> If the name of a person alleged to have been bribed or treated has been by mistake<sup>2</sup> omitted from the particulars delivered in pursuance to an order, it is the usual practice to postpone the case and to order particulars in the meantime to be given to the respondent.<sup>3</sup> Some judges, however, have refused to allow any evidence to be given of such a case.<sup>4</sup>

General rule  
as to what  
should be  
given in par-  
ticulars.

As a general rule it is necessary to give under an order for particulars the names of all persons affected by corrupt practices,<sup>5</sup> with their christian names and addresses, and in cases of bribery the times when they were bribed,<sup>6</sup> also of all acts which might be relied upon to render the election null and void, and which would not be included in the six-day particulars under rule 7.<sup>7</sup> If there is a charge in the petition against the returning officer, stringent particulars as to such a charge will be granted on his application, to be given six days before the trial.<sup>8</sup>

Particulars  
when to be  
given.

Particulars applied for under rule 6 (English and Irish), are, as we have seen,<sup>9</sup> usually ordered

<sup>1</sup> See also similar observations of O'Brien, J., in the *Youghal case*, O. & H. 295.

<sup>2</sup> In the Bristol case, 2 O. & H. at 128, Bramwell B. said, "If I came to the conclusion that the suppression of the name was wilful, I shall know what value to put upon the rest of the evidence."

<sup>3</sup> *Coventry*, O. & H. 104—105; *Greenock*, O. & H. 248; *Stalybridge*, O. & H. 72; *Waterford*, 2 O. & H. 25.

<sup>4</sup> *Lynn*, O. & H. 207.

<sup>5</sup> This was ordered by Hannen, J., in the *Bristol case*, *Times*, May 21, 1870; S. C. 22 L. T. N. S. 488.

<sup>6</sup> *Guildford*, 19 L. T. N. S. 528.

<sup>7</sup> *Warrington*, 19 L. T. N. S. 572. See *Londonderry*, *ib.*, 573.

<sup>8</sup> See form of order, *ante*, p. 20. See also *per* Blackburn, J., in *Hereford case*, O. & H. 198, and *Tamworth case*, 19 L. T. N. S. 527. In the *Gloucester case*, June 18, 1873, Blackburn, J., at chambers, ordered particulars to be given five days before the trial. See *Pall Mall Gazette*, June 19, 1873.

to be given three days before the trial. If, however, the petition contains charges other than the ordinary ones of bribery, treating, and undue influence, particulars with regard to those charges are usually ordered to be given within five or six days of the date of the order.<sup>1</sup>

If the petitioner claims the seat for an unsuccessful candidate, both petitioner and respondent must, six days before the trial,<sup>2</sup> deliver to the master and also to the agent on the other side (if there has been one appointed<sup>3</sup>) a list of the votes intended to be objected to, and of the heads of objection<sup>4</sup> to each vote, which lists may be inspected and copied by all parties concerned; and no evidence may be given against any vote or upon any head of objection not specified in the list except by leave of the court or a judge upon any terms that may be thought fit.<sup>5</sup> Although no mention is made in the rules as to giving in a list of votes to be added upon scrutiny, it appears that a judge will, upon application, order such a

Particulars  
when the  
seat is  
claimed.

<sup>1</sup> In the *Bradford* case, 19 L. T. N. S. 573, Hannen, J., made an order for particulars of "other illegal and corrupt means" (i.e., other than bribery, treating, and undue influence), to be delivered within five days of the date of the order. In the *Londonderry* case, 19 L. T. N. S. 573, Keogh, J., after argument, made an order for particulars of bribed persons, bribers, and persons unduly influenced, within three days of the trial, and for particulars of other specific charges alleged in the petition, within six days of the date of the order.

In the *Bristol* case, *Times*, May 12, 1870, 22 L. T. N. S. 487, Bramwell, B., on an application for particulars of bribery at the preliminary test ballot, made an order for their delivery six days before the trial.

<sup>2</sup> Rule 7 (English and Irish), App. xxxviii. rule 9. Scotch, App. lxi.

<sup>3</sup> As to this, see above, p. 9, note (4).

<sup>4</sup> See forms of heads of objection in Appendix, p. lxi.

<sup>5</sup> In the *Waterford* case, 2 O. & H. 4, Hughes, B., did not refuse to hear evidence as to striking off a vote not mentioned in the list, but said that if anything came of it the amplest opportunity should be given to the other side of meeting the case.

list to be furnished.<sup>1</sup> It may be observed that these last-mentioned rules<sup>2</sup> in no way prevent application for particulars being made under the first-mentioned rules.<sup>3</sup>

Objections usually relied upon in a scrutiny.

The grounds of objection usually relied upon in a scrutiny are as follows:—

- (1) That the voter was guilty of bribery<sup>4</sup> within the meaning of the Act of 17 & 18 Vict. c. 102, s. 2.
- (2) That the voter, before, during, and after the last election, did by himself or other persons on his behalf, agree, or contract, for money or some other valuable consideration, place, or employment, for voting or agreeing to vote for the respondent or for refraining or agreeing to refrain from voting for A. B.
- (3) That the voter was guilty of corrupt treating in order to induce voters to vote or refrain from voting.
- (4) That the voter did corruptly, before, during, or after the said election, accept meat, drink, &c., given or provided by the said respondent himself or by other persons on his behalf, on account of voting, or agreeing to vote, or having voted for the said respondent, or for refraining, or agreeing to refrain, or having refrained from voting for A. B.
- (5) That the voter intimidated and unduly influenced certain voters to vote at the

<sup>1</sup> i.e., rule 7 (English and Irish), rule 9 (Scotch).

<sup>2</sup> In the *Horsham case*, 20 L. T. N. S. 180, Willes, J., made an order for a list of votes to be added, but he made the time for furnishing them *three* days before the trial, and not six.

<sup>3</sup> *Guildford*, 19 L. T. N. S. 528. In the *Salford case*, 19 L. T. N. S. 502, Willes, J., said that rules 6 and 7 (English and Irish) were to be read together.

<sup>4</sup> For the form to be employed in stating the heads of objection, see App. lxi.

<sup>5</sup> The vote, not only of a briber, but of the person bribed,

said election for the respondent, or to refrain from voting for A. B.

(6) That the voter was unduly influenced or intimidated or induced to vote for the respondent, or to refrain from voting for A. B.

(7) That the voter did not actually and personally vote at the said election, but was dead, absent, or otherwise incapable of voting at such election, and that he was personated by some other person who falsely assumed to vote and did vote in his name for the respondent.

(8) That the voter at the time of the last election was an alien or an infant under twenty-one years of age, or a woman, and therefore incapable of voting at the said election.

(9) That the voter, within six months before or during the last election, was retained, hired, and employed for reward for the purposes of election<sup>1</sup> by A. B., a candidate at such election, contrary to the provisions of (for England) 30 & 31 Vict. c. 102, s. 11.<sup>2</sup>

(10) That the voter did not, ever since July 31, A.D. 18—, and at the time of his voting at the said last election, reside within the said borough, or within seven statute miles thereof.<sup>3</sup>

will be struck off on a scrutiny, *Northallerton case*, 1 O. & H. 224, and that, too, upon the mere admission of a person that he has been bribed; *King's Lynn*, 1 O. & H. 208.

<sup>1</sup> A vote will not be struck off unless there is a stipulation that the voter should be employed, or if the voter has only acted voluntarily; *Northallerton*, 1 O. & H. 170.

<sup>2</sup> If for Scotland, contrary to the provisions of 31 & 32 Vict. c. 48, s. 8, or if for Ireland, 31 & 32 Vict. c. 49, s. 8.

<sup>3</sup> As to what constitutes a sufficient residence, see *Northallerton case*, 1 O. & H. 170, 171; *Guildford case*, 1 O. & H. 44.

## ELECTION PETITIONS.

- (11) That the voter was disqualified at the time of the said election for voting by reason of his having received parochial relief<sup>1</sup> subsequently to the 31st July, A.D. 18—.
- (12) That the premises, for the occupation of which his name appears in the register, being situate in a parish in the said borough in which there were rates for the relief of the poor during the twelve months next previous to July 31, A.D. 18—, were not rated for all such poor rates.
- (13) That for twelve months next previous to July 31, A.D. 18—, he did not occupy as a lodger the premises in respect of which his name appears on the register.
- (14) That the voter had been induced to vote, by a fraudulent contrivance within the meaning of 17 & 18 Vict. c. 102, s. 5.<sup>2</sup>
- (15) That his name had been entered by mistake more than once on the register.<sup>3</sup>

Amendment  
of particu-  
lars.

If after particulars have been delivered, pursuant to a judge's order, the petitioners are desirous of giving evidence with regard to any case not mentioned in the particulars, this can

<sup>1</sup> In the *Northallerton case*, 1 O. & H. 171, Willes, J., said, that his impression was that nothing could be made of cases of parochial relief received before July 31, A.D. 18—; but that relief received between July 31 and the election might be relied on as a legal incapacity.

<sup>2</sup> It appears that to induce a person to abstain from voting on a fraudulent pretence to pair with him is within the section, *Northallerton*, 1 O. & H. 169, also fraudulently to induce a person to mark his ballot paper in a particular way. *Gloucester*, 2 O. & H. 60.

<sup>3</sup> Although the register is now, by the *Ballot Act*, s. 7, conclusive, it is clear that a voter can have no right to vote more than once; consequently if his name is entered (by mistake) twice or more on the register, and he votes more than once, his second vote would be struck off. See *Oldham case*, 1 O. & H. 156.

only be done by leave of the court.<sup>1</sup> Usually, if a name has been omitted by mistake,<sup>2</sup> or if the facts of a case have only recently come to light,<sup>3</sup> or on the ground of public policy<sup>4</sup> (if the respondent is alleged to be personally implicated) leave will be given, upon a summons being taken out for the purpose, and an affidavit made as to the circumstances, to insert the case in the particulars, and to postpone it until the respondent has had time to investigate it.<sup>5</sup> Sometimes even amendments have been allowed to be made in the particulars, without taking out a summons, or making an affidavit,<sup>6</sup> while, on the other hand, in other cases judges have refused altogether to go into cases which were not in the first instance mentioned in the particulars.<sup>7</sup> In the *Longford* case, 2 O. & H. 8—11, considerable discussion took place as to the amendment of particulars. It appeared that the petitioner's agent had not himself gone down to prepare instructions for the petition; neither had he any agent there, and that the bill of particulars furnished was obtained from loose information obtained from third parties, without any due inquiry. Under these circumstances, Fitzgerald, B., permitted the particulars to be amended as to cases of undue clerical influence, because he considered it so great an evil, that it was his duty to bring all instances of it before the court, and as

<sup>1</sup> See additional Scotch rule 2, App. xxxvii. This has been the uniform practice in all English and Irish cases although there is no express provision in the rules about it. See ante, p. 22, note (8).

<sup>2</sup> *Dublin* case, O. & H. 271; *Londonderry*, *ib.* 275, but see *Tamworth*, *ib.* 76.

<sup>3</sup> *Carrickfergus*, O. & H. 264; *Bodmin*, *ib.* 119; *Cheltenham*, *ib.* 63.

<sup>4</sup> *Bodmin*, O. & H. 119.

<sup>5</sup> *Cheltenham*, O. & H. 63; *Wigan*, *ib.* 189; *Longford*, 2 O. & H. 8—11.

<sup>6</sup> *Bewdley*, O. & H. 16; *Penryn*, *ib.* 127; *Bodmin*, *ib.* 119; *Longford*, 2 O. & H. 9; *Bristol*, 2 O. & H. 28.

<sup>7</sup> *Lynn*, O. & H. 207.

to several cases of treating, he allowed the particulars to be amended upon a strong affidavit; but in other cases of bribery and treating, where the affidavit was vague, or where there was no affidavit at all, he declined to allow an amendment, on the ground that there had not been sufficient previous inquiry, and that, if he did so, it would be a premium to inactivity and inattention in the getting up of a case.

New order  
for particu-  
lars after  
case com-  
menced.

It would appear from the remarks of Bramwell, B., in the *Bristol case*, 2 O. & H. 28, that an entirely new order for particulars cannot be made after the commencement of the hearing of a case, though an addition to particulars already furnished under an order already made, may be ordered.

#### *Recriminatory Case.*

Recrimina-  
tory case.

One way of meeting a claim of a seat<sup>1</sup> is by setting up a recriminatory case, that is to say, by proving that the person for whom the seat is claimed, was guilty of such conduct as would make his election undue.<sup>2</sup>

Delivery of  
particulars  
in.

When such a case is set up by the respondent, he must, six days before the trial, deliver to the master and to the petitioner's agent (if he has named one) a list of the objections to the election upon which he intends to rely, which list may be inspected and copied by all persons concerned; and no evidence may be given by the respondent of any objection not specified in the list except by leave of the court or a judge, upon any terms that may be thought fit.<sup>3</sup>

<sup>1</sup> A recriminatory case cannot be set up unless the seat is claimed, *per Willes, J.*, *Blackburn case*, 1 O. & H. 199.

<sup>2</sup> Parl. El. Act, s. 53, App. xvi. See the decision in the *Stafford case*, 1 O. & H. 233.

<sup>3</sup> Rule 8 (English and Irish), App. xxiv. rule 10 (Scotch), App. xxxviii.

*List of Petitions.*

As soon as may<sup>1</sup> be the master in English and List of pe-  
Irish cases<sup>2</sup> and the principal clerk in Scotch cases<sup>3</sup>tititions.  
is to make out a list of the petitions which have  
been presented to the court, and which are at issue,  
that is to say, petitions, the security as to which has  
not been objected to, or, if objected to, has been made  
sufficient,<sup>4</sup> and to place them in the order in which  
they were presented.<sup>5</sup> If more than one petition  
has been presented relating to the same election,  
they are all to be bracketed together and to be  
treated as one petition, and to stand in the election  
list in the place where the last of such petitions  
would have stood if it had been the only petition  
presented, unless the court otherwise orders.<sup>6</sup> This  
election list shall contain the name of the agents  
(if any) of the petitioners and respondents and the  
addresses to which notices may be sent, and is to  
be kept open for inspection at the master's office,<sup>7</sup>  
at any time during office hours, and to be put up  
for that purpose, upon a notice board appropriated  
to proceedings under the Act, and headed Parlia-  
mentary Elections Act, 1868.<sup>8</sup>

*Withdrawal of Petitions.*

Any petition which has once been presented Withdrawal  
of petitions.

<sup>1</sup> Parl. El. Act, s. 10, App. iv.

<sup>2</sup> Rule 30 (English and Irish), App. xxviii.

<sup>3</sup> Rule 18 (Scotch), App. xl.

<sup>4</sup> Parl. El. Act, s. 9, App. iv.

<sup>5</sup> *Ib.* s. 11 (1), App. ix. It appears therefore from this  
enactment that any petitions that are not presented, or, if  
presented, are not at issue at the time of making the list,  
must be set down at the bottom of the list in the order in  
which they come to issue, irrespective of the order in which  
they were presented.

<sup>6</sup> *Ib.* s. 23, App. viii.

<sup>7</sup> S. 10, App. iv.

<sup>8</sup> Rule 30 (English and Irish), App. xxviii. rules 16, 11.  
(Scotch) App. xl.

under this Act must be proceeded with and inquired into,<sup>1</sup> unless leave is given to withdraw it. And this is the case notwithstanding that the respondent gives up his seat by accepting an office of profit under the Crown,<sup>2</sup> notwithstanding also the prorogation of Parliament.<sup>3</sup>

Not necessary if there is a dissolution.

If, however, the House is dissolved while a petition is pending, the petition will fall to the ground; and, if security was given by a deposit of money, the money will immediately be returned to the petitioner. This is in accordance with the former parliamentary practice (as there is no provision on this subject in the "Parliamentary Elections Act, 1868,") according to which a petition necessarily fell to the ground on a dissolution, because the tribunal which was to try it ceased to exist.<sup>4</sup> Consequently it is not necessary to make

<sup>1</sup> In the *Brecon case*, 2 O. & H., leave to withdraw the petition was applied for too late, consequently a judge went down and a commission for inquiry was opened. See also *Harlepool case*, 19 L. T. N. S. 821.

<sup>2</sup> Parl. El. Act, s. 18, App. viii. It may be observed that there is no provision as to what is to become of a petition, if the petitioner is called to the Upper House while it is finding. As to the former practice, see *Belfast case*, B. & Aust., 554.

<sup>3</sup> *Ib.* s. 19, App. viii. There is no provision in the Act as to what shall take place in case of a dissolution while a petition was pending.

<sup>4</sup> Per Lord Coleridge, C. J., in the matter of the Exeter petition in Common Pleas, Jan. 27, 1874. The following report of the case appeared in the *Pall Mall Gazette* for that day:—

"THE EXETER ELECTION PETITION.

"In the Court of Common Pleas to-day, Mr. Chandos Leigh applied on behalf of the petitioners in the case of the Exeter election petition for a rule to carry out an arrangement by which the petition should be allowed to drop, and the money deposited be paid out of court. Mr. Petheram, for the respondent, said that he had been instructed to consent to the rule asked for, upon the distinct statement that

any application as to the withdrawal of a petition in the event of a dissolution.

If a petitioner desire to withdraw a petition, he must first of all give notice of his intention to apply for leave to do so, and of the grounds on which his application is made.<sup>1</sup> This notice, which should be as near as may be in the prescribed form,<sup>2</sup> must be left at the office of the master in English and Irish cases,<sup>3</sup> and of the principal clerk in Scotch cases,<sup>4</sup> and a copy of it must be sent to the respondent (or his agent if he has one<sup>5</sup>) and to the returning officer, who is to make it public in the county or borough to which it relates, and to advertise it in the prescribed form in at least one newspaper.<sup>6</sup> Within five days after this notice has been published by the returning officer, every person who might have been a petitioner in the first instance may give notice in writing, signed by him or on his behalf, to the master or principal clerk, of his intention to apply at the hearing to be substituted for the petitioner;<sup>7</sup> but the want of such notice shall not

there never had been any intention of charging Mr. Mills with personal bribery or corruption. To this the petitioners assented. The Lord Chief Justice said: We have nothing to do with that. I am of opinion that the Queen having been pleased to dissolve Parliament—of which the court will take practical notice—a case has occurred which is not provided for by the 31 & 32 Vict. c. 125, and therefore we must guide our proceedings by the old parliamentary practice, according to which a petition dropped or abated by a dissolution. This being so, I have no doubt that there should be a rule to return the £1,000 which had been deposited."

<sup>1</sup> Parl. El. Act, s. 35, App. xi.

<sup>2</sup> Rule 45 (English and Irish), App. xxxi., and rule 25 (Scotch), App. xli.

<sup>3</sup> Rule 46 (English and Irish), App. xxxi.

<sup>4</sup> Rule 25 (Scotch), App. xli.

<sup>5</sup> Rule 10 (English and Irish), App. xxiv., and rule 12 (Scotch), App. xxxix.

<sup>6</sup> Rule 47 (English and Irish), App. xxxi., and rule 26 (Scotch), App. xlii.

<sup>7</sup> No such application has yet been made. See, however,

defeat such application, if in fact made at the hearing,<sup>1</sup> subject, however, in Scotch cases, to such order as to postponement of the hearing and costs as may be just.<sup>2</sup>

Hearing application to withdraw.

The application for leave to withdraw a petition may be heard either before the Court of Common Pleas or a judge, and the time and place for hearing the application must be fixed by a judge (but shall be not less than a week after the notice of withdrawal has been given), and shall be given notice of in such manner and at such time as the judge directs. If any person has given notice that he intends to apply to be substituted as a petitioner, notice of the time and place of hearing the application must be given to him, as soon as they are fixed.<sup>3</sup> In order to obtain leave to withdraw a petition it is sufficient if affidavits are made by the petitioner, his agent, and the respondent that no corrupt arrangement has been come to between them.<sup>4</sup> If there is more than one

*Stockport case*, 19 L. T. N. S. 743, where the borough presented a petition to the judge praying that the inquiry might be held.

<sup>1</sup> Rule 48 (English and Irish), App. xxxii., and rule 27 (Scotch), App. xlii.

<sup>2</sup> Rule 27 (Scotch), App. xlii.

<sup>3</sup> Rule 49 (English and Irish), App. xxxii., and rule 28 (Scotch), App. xlii.

<sup>4</sup> This was so decided in the *Stockport case*, 19 L. T. N. S. 743, which was the first application of this kind that was made.

The affidavit should be in the following form:—  
In the Common Pleas.

Parliamentary Elections Act, 1868.

Election petition for

petitioner,  
respondent.

Affidavit of  
I, \_\_\_\_\_ of \_\_\_\_\_ in the county of \_\_\_\_\_  
make oath and say as follows:—

That to the best of my knowledge, information, and belief  
the withdrawal of, or application to withdraw, this petition  
is not the result of any corrupt arrangement, or in con-

petitioner the consent of all the petitioners must be obtained to the application.<sup>1</sup> If a petition is withdrawn the petitioner will be liable to pay the respondent's costs.<sup>1</sup> If at the hearing of the application to withdraw the court thinks fit to substitute any person so applying, the substituted petitioner will stand in the same position as nearly as may be as the original petitioner and will be subject to the same liabilities: he must also give security within the prescribed time after the order of substitution to the same amount as in the case of a new petition, and subject to the like conditions.<sup>1</sup>

If the judge allow the petition to be withdrawn he must report to the speaker whether in his opinion such withdrawal was the result of any corrupt arrangement or in consideration of the withdrawal of any other petition, and if so, the circumstances attending the withdrawal.<sup>2</sup>

Report of  
judge as to  
withdrawal.

#### *Reinstatement of Petition.*

If after leave to withdraw a petition had been obtained it was proved that such leave had been obtained through fraud or mistake, it is not clear what course should be taken. There is no provision in the Parliamentary Election Act as to reinstating a petition which has been once withdrawn, but there is nothing to prevent a petition from being presented to the House of Commons

Reinstatement  
of  
petition  
after  
withdrawal.

sideration of the withdrawal of, or application to withdraw, any other petition.

<sup>1</sup> Parl. El. Act. s. 35, App. xi.

<sup>2</sup> *Ib.* s. 36, App. xii. The report of the judge is usually in the following form:—"I, Sir A. B., Kt., one of the judges for the trial of election petitions in England, report as follows:—Leave has been given to withdraw the above petition upon proof to my satisfaction that such withdrawal was not the result of any corrupt arrangement, and no person applying to be substituted as petitioner." See all the reports as to petitions withdrawn as published by the House of Commons, printed May 3, 1869.

stating the facts, and praying for a reinstatement, and it seems probable that that would be the proper course to adopt.<sup>1</sup> Such petitions were in two cases presented to the House under the former practice, but in neither case was sufficient cause shown for reinstating the original petition.<sup>2</sup>

*Abatement of Petition.*

Abatement  
of petition.

A petition is abated by the death of a sole petitioner, or of the survivor of several petitioners.<sup>3</sup> In case of such abatement notice of the fact must be given by the person interested, in the same way as notice is given of an application to withdraw a petition, and, upon application within one calendar month (or within such further time as the court may allow) after such notice has been given, any person who might originally have been a petitioner may apply to be substituted as a petitioner, and, if substituted, must give security to the same amount as if a new petition had been presented.<sup>4</sup>

*Substitution of Respondent.*

Substitution  
of respon-  
dent.

If before<sup>5</sup> the trial of a petition any of the four following events happen in the case of the respondent; *i.e.* (1) if he die; (2) if he is summoned to

<sup>1</sup> In *Waygood v. James*, L. R. 4 C. P. 369, this course was suggested by Willes, J., and commented on by Brett, J., at p. 372. See also remarks of Sir Joseph Napier in his judgment in the *Dungarvan case*, 2 P. R. & D. 318.

<sup>2</sup> *Norwich printed minutes*, 1853. *Pontefract printed minutes*, Aug. 12, 1859.

<sup>3</sup> *Parl. El. Act*, s. 37, App.

<sup>4</sup> Rule 50 (English and Irish), App. xxxii.; and rule 29 (Scotch), App. xlvi.

<sup>5</sup> There is no provision in this Act in case any of the four events happen after the commencement of the trial of a petition. There has never yet been any statutory provision for these contingencies, but under the old practice in the *Dublin case*, Falc. & F. 151, the sitting member died during the hearing, but the case was heard out and decided upon notwithstanding. So also in *East Retford case*, Glanville, 128.

the House of Peers, (3) if the House of Commons resolve that his seat is vacant, (4) if he gives notice<sup>1</sup> that he does not intend to oppose petition, notice of such event may be given in the county or borough to which the petition relates by any person entitled to be a petitioner by advertising it in a county newspaper and by leaving a copy of the notice with the returning officer and with the master or (in Scotland) the principal clerk.<sup>2</sup> Within ten days (or such futher time as the court may allow) of the giving the notice, application may be made to be admitted as respondent either with or in the place of the former respondent.<sup>3</sup> Any number of persons not exceeding three may be so admitted.<sup>4</sup> If any of these four events above mentioned happen and no one applies to be admitted as respondent either with or in place of the former respondent, it appears<sup>5</sup> that the trial must take place just the same; no case, however, of the kind has as yet occurred.

*Double Return.*

If, in the case of a petition complaining of a double return,<sup>6</sup> the member whose return is complained of declines to oppose the petition, and gives notice to that effect,<sup>7</sup> and there is no petition

Unopposed petition in case of double return.

<sup>1</sup> As to giving this notice, see rules 52, 53 (English and Irish), App. xxxii., and rule 31 (Scotch), App. xlivi.

<sup>2</sup> Rule 51 (English and Irish), App. xxxii., and rule 30 (Scotch), App. xlvi.

<sup>3</sup> Parl. El Act, s. 38, rule 54 (English and Irish), App. xxxii., rule 32 (Scotch), App. xlivi.

<sup>4</sup> Parl. El Act, s. 38, App. xii.

<sup>5</sup> By s. 39 if a respondent gives notice that he does not intend to oppose the petition he may not sit or vote until the judge has informed the House of the result of the petition.

<sup>6</sup> There has been one instance of a double return since the passing of the Parl. El. Act, 1868. That was at Horsham, in Nov., 1868. In that case a petition was presented by one of the members returned, and was unopposed by the other member.

<sup>7</sup> Rule 52 (English and Irish), App. xxxii., rule 31 (Scotch), App. xlivi.

against the other member returned, the petitioner may withdraw his petition by notice addressed to the master (or, in Scotland, the principal clerk), who is therefore to report the fact of such withdrawal to the Speaker, and the House of Commons will then give the necessary directions for amending the return.<sup>1</sup>

*Petition heard as a Special Case.*

Petition  
heard as a  
special case.

Before the trial of a petition either party may apply to the court to turn it into a special case.<sup>2</sup> This application may be made either to the court itself or to a judge in chambers.<sup>3</sup> If the application is assented to, the special case, when stated, should be submitted to the judge for his approval.<sup>4</sup>

*Trial of Petitions.*

Trial of pe-  
titions.

The trial of all petitions must now take place before a puisne judge in England and Ireland, and before a judge of the Court of Session in Scotland selected out of each court respectively in manner provided by the Act.<sup>5</sup> The trial must be held in the county or the borough to which the petition relates, unless there appear to be circumstances which make it desirable that the trial should be held elsewhere,<sup>6</sup> in which case the court may appoint such other place as shall seem most con-

<sup>1</sup> Parl. El. Act. s. 40, App. xiii. This section now applies to Ireland. See repealing schedule of Ballot Act, 1872.

<sup>2</sup> Parl. El. Act, s. 11 (16), App. vii. See special cases stated in *Rox v. Birley*, L. R. 4 C. P. 296, and *Ryder v. Hamilton*, *ib.* 559.

<sup>3</sup> Rule 37 (English and Irish), App. xxix., and rule 22 (Scotch), App. xli.

<sup>4</sup> *Ryder v. Hamilton*, 19 L. T. N. S. 528. As to special cases see also *Hereford case*, 19 L. T. N. S. 703, and *Warrington case*, 19 L. T. N. S. 573.

<sup>5</sup> As to choosing which judges are to be placed on the rota, see Parl. El. Act, s. 11 (2), (3), (4), (5), (7), as to England and Ireland; and s. 28 (6), (7), (8), (9), (11), as to Scotland.

<sup>6</sup> This was done in the *Sligo case*, O. & H. 300.

venient.<sup>1</sup> The place for holding the trial at, as well as the time, is to be fixed by the judges on the rota.<sup>2</sup> Petitions are to be tried in the order in which they were presented to the court by the judges for the time being on the rota according to their seniority, unless the judges otherwise agree among themselves, in which case the trial of each petition shall be taken in manner provided by such agreement.<sup>3</sup> If there is more than one respondent to a petition, such petition shall be for all the purposes of the Act<sup>4</sup> deemed to be a separate petition against each respondent, but the case against each respondent may, for the sake of convenience, be tried at the same time.<sup>5</sup> If more than one petition has been presented relating to the same election, all such petitions shall be dealt with as one petition, unless the court otherwise direct.<sup>6</sup>

It is the duty of the master in English and Irish cases,<sup>7</sup> and of the principal clerk in Scotch

Notice of trial.

<sup>1</sup> Parl. El. Act, s. 11 (11), App. vi.

<sup>2</sup> Rule 31 (English and Irish), App. xxviii., and rule 17 (Scotch), App. xl.

<sup>3</sup> Parl. El. Act, s. 11 (6), App. vi.

<sup>4</sup> As to the meaning of the expression, "the purposes of the Act," Bovill, C. J., said, in *Pease v. Norwood*, L. R. 4 C. P., p. 247, "The purposes of the Act are to test the validity of the election of the sitting members, to unseat them, and to seat other persons;" and Montague Smith, J., adds, p. 258, "The expression 'the purposes of the Act' was not meant to apply to the condition, as to security, imposed on the petitioner."

<sup>5</sup> As the Act says "may," not "shall be tried together," it appears where there are two or more respondents, the case against each might be taken separately if the court so ordered, but no instance of this has yet occurred.

<sup>6</sup> In the *Cashel case*, O. & H. 286, there were two petitioners, and an application to try them together was opposed by the petitioners; however, Fitzgerald, B., ordered them to be opened together, and after the opening the point does not appear to have been pressed. In the *S. W. Riding case*, O. & H. 213, there were two petitions, which were heard separately.

<sup>7</sup> By rule 32 (English and Irish), App. xxviii., and rule 18 (Scotch), App. xl, it is expressly provided that if the copies

cases to give notice of the time and place of the trial of a petition by sticking up a notice (which in English and Irish cases may be in the form given in rule 33) in his office, and by sending by post copies of the notice fifteen days before the day fixed for the trial to the petitioner's and the respondent's address, if they have left any with him, and to the returning officer of the county or borough to which the petition relates; and the returning officer is forthwith to publish the same in the county or borough.<sup>1</sup> Also, in English cases,<sup>4</sup> the master is to give notice of the time and place of the trial of each petition to the Treasury and to the clerk of the crown, who, before the day fixed for the trial, is to transmit to the registrar<sup>2</sup> the ballot papers, and all other documents which were forwarded to him by the returning officer after the election, in pursuance of rule 38 of the Ballot Act.<sup>3</sup> These documents are to be kept in safe custody by the registrar until the trial of the petition is concluded, and then sent back to the clerk of the crown.<sup>4</sup>

Postpone-  
ment of  
commencement of the  
trial

If any party to a petition desire to postpone the trial of a petition an application to the effect may be made to any judge in English or Irish cases, but in Scotch cases it must be made to one of the election judges.<sup>5</sup> It may also be postponed<sup>6</sup> (in

of the notice sent by post miscarry, this shall not vitiate the notice if it has been duly posted up in the master's office. In Scotland, however, if the notice is not duly received the matter may be brought before the judge, who may dispose of it as he deems just.

<sup>1</sup> Rule 31 (English and Irish), App. xxxviii. and rule, 17 (Scotch), App. xl.

<sup>2</sup> As to the appointment of this officer see post, p. 39.

<sup>3</sup> By the 38th rule of the Ballot Act, it is enacted that the term "poll book" shall, when used in any enactment relating to the conveyance of poll books, be construed to include any document forwarded in pursuance of that rule.

<sup>4</sup> Additional Rule, dated Dec. 19, 1868, App. xxxv. There is no such rule, either for Ireland or Scotland.

<sup>5</sup> Rule 34 (English and Irish), App. xxix., and rule 19 (Scotch), App. xli.

English and Irish cases), apart from an application by a party, by notice in such form as the judge who orders the postponement may direct, which notice is to be sent to the returning officer, and forthwith published by him. In the event of the judge who is to try a petition not having arrived at the time appointed for the trial, the commencement of the trial is *ipso facto* to stand adjourned to the ensuing day, and so from day to day until the judge arrives.<sup>1</sup>

Before the commencement of each trial an officer must be appointed, to be called, in English and Irish cases, the registrar of the court, who is to attend the trial in like manner as clerks of assize and of arraigns attend at the assizes.<sup>2</sup> This officer is, in English and Irish cases,<sup>3</sup> to perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.<sup>2</sup> The officer appointed for Scotch cases is to attend and discharge the duties of clerk of the court in like manner and to the like effect as the clerks of the circuit courts of Justiciary, and, subject to the orders of the presiding judge, he is to keep a record of the proceedings at the trial, and after the trial to transmit this record to the office of the principal clerk.<sup>4</sup>

In English and Irish cases the title of the Court of Record, held for the trial of an election petition, may be as prescribed in rule 38, and it shall be sufficient to entitle all proceedings in that court.<sup>5</sup>

<sup>1</sup> Rule 35 (English and Irish), App. xxix. There is no such rule as to Scotland.

<sup>2</sup> Rule 39 (English and Irish), App. xxix.

<sup>3</sup> One of the duties prescribed to this officer is to take the examination of witnesses too ill to attend in court. *Wallingford case*, O. & H. 57.

<sup>4</sup> Rule 21 as to Scotch cases, App. xli.

<sup>5</sup> Rule 38 (English and Irish), App. xxix. This rule only applies to proceedings taken after the trial has actually

Appoint-  
ment of  
officer to act  
as registrar.

Title of the  
court.

By what  
rules trial  
regulated.

The trial of a petition is conducted in the same way as a case at *nisi prius*,<sup>1</sup> and the judge has the same powers,<sup>2</sup> and is attended in the same manner as though he were sitting at *nisi prius*;<sup>3</sup> but the practice, procedure, and costs of a petition, and the trial thereof, and the certifying and reporting thereon, are regulated by the general rules and orders which the judges on the rota are empowered to make;<sup>4</sup> and, so far as such rules do not extend, the principles,<sup>5</sup> practice, and rules on which committees of the House of Commons have heretofore acted in dealing with election petitions, shall be observed so far as may be by the court and judge.<sup>6</sup>

Evidence.

The same general rules with respect to the admissibility and rejection of evidence which hold good as to ordinary cases at *nisi prius* apply also to the trial of petitions. It is unnecessary, therefore, to say much on this branch of the subject. There are, however, several matters which require special mention.

Corrupt  
practices  
may be  
proved be-  
fore agency.

Of these, perhaps, the most important is the provision of sect. 17 of the Parliamentary Election Act, which enacts that evidence relating to any

commenced. By rule 5 the petition itself, and also (it seems) all preliminary proceedings with respect to it, are to be entitled, "In the Common Pleas. The Parl. El. Act, 1868." There is no such rule as to Scotch cases.

<sup>1</sup> In the *Norwich case*, O. & H. 10, Martin, B., said, "I am trying a civil case, and the rules applicable to the trial of a civil case are applicable to this."

<sup>2</sup> Parl. El. Act, s. 29, App. x.

<sup>3</sup> *Ib.*, s. 30, App. x. See observations of Keogh, J., on this in *Galway County case*, 2 O. & H. 48-51.

<sup>4</sup> Parl. El. Act, s. 25, App. ix. See these rules in the Appendix, p. xxii., as to England and Ireland; and p. xxxvii. as to Scotland.

<sup>5</sup> This word "principles," as here used, means nothing more than practice or procedure; per Keating, J., in *Earl Beauchamp v. Madresfield*, L. R. 8, C. P. 253.

<sup>6</sup> *Ib.*, s. 26. App. ix. See dictum of Lord Coleridge, C. J., as to this, *ante*, p. 80, note (3).

charge of corrupt practices, viz.,<sup>1</sup> bribery, treating, undue influence and personation, may be given before agency is proved, *unless the judge otherwise directs*. These last words give the court a discretion as to admitting such evidence, and are evidently intended, to enable a judge to exclude it, unless there is a reasonable probability of proving agency afterwards.<sup>2</sup> It seems clear, however, that the court is at liberty, if it chooses to do so, to hear all that occurred in connection with an election, without any regard to whether agency will be ultimately proved or not.<sup>3</sup> But if the corrupt act was done after the election was over, it is not usual to permit evidence to be given with regard to it, as ordinary agency ceases with the close of the poll.<sup>4</sup> Such evidence, however, is sometimes admitted, for the purpose of throwing light upon some other transaction, and,<sup>5</sup> if admitted at all, it seems that it need not be confined to the events immediately following the election, but may be extended to occurrences even up to the very time of the hearing of the petition.<sup>6</sup>

Generally speaking, a witness cannot be asked questions as to what occurred at previous elections.<sup>7</sup>

<sup>1</sup> By Parl. El. Act, s. 3, corrupt practices is defined as "bribery, treating, and undue influence or any of such offences, as defined by Act of Parliament, or recognised by the common law of parliament," and by the Ballot Act, s. 24, it is enacted that "the offence of personation shall be deemed to be a corrupt practice within the meaning of the Parl. El. Act. 1868."

<sup>2</sup> Per Bramwell, B., in *Bristol case*, 2 O. & H. 29. See also, *Guildford case*, 1 O. & H. 14.

<sup>3</sup> In the *Galway case*, 2 O. & H. 50, Keogh, J., declined to exclude evidence of what occurred after the election was over, although it was admitted that ordinary agency had ceased.

<sup>4</sup> Per Martin, B., at *Salford*, 1 O. & H. 136. *Lynn*, *ib.*, 208. *Norfolk*, *ib.*, 243.

<sup>5</sup> *Southampton case*, 1 O. & H. 223.

<sup>6</sup> *Galway county*, 2 O. & H. 51, 52.

<sup>7</sup> *Stafford*, 1 O. & H. 231. *Cashel*, *ib.*, 287. As to the

Evidence as  
to previous  
elections.

If, however, a candidate, who has been defeated at a former election, stands again, upon that election having been avoided on petition, and is petitioned against, evidence may be given in support of that petition, of any corrupt practices alleged to have been committed by him at the previous election. And such evidence will be admissible, even if the conduct of the candidate has already been inquired into upon a recriminatory case set up in the first petition.<sup>1</sup>

Admission of recriminatory and exculpatory evidence.

If the seat is not claimed, the respondent is not entitled to give any evidence of a recriminatory nature while, at the same time, the petitioner will not be permitted to go into any evidence of an exculpatory character.<sup>2</sup>

Value of evidence of spies and informers.

As to the value of the evidence of spies and informers, the following observations of Blackburn, J., are important.<sup>3</sup>

"There is a peculiar class of evidence occurring upon these election petitions; I mean that of witnesses who in a criminal court one would call self-discrediting witnesses,—spies, informers, and persons guilty of crime according to their own story,—who come to seek the reward that is to be got by telling the truth the other way. In a criminal court a verdict of guilty would never be permitted upon the evidence of such witnesses without confirmation. That has long ago been established. In a civil court, though they are looked upon with distrust, there is no absolute necessity that they should be confirmed. In such inquiries as these we must look upon such evidence with considerable distrust, but still treat it as information which may be true. It calls upon the

protection of witnesses by 26 Vict. c. 29, s. 7, if they answer such questions, see post, p. 59, note 5.

<sup>1</sup> See allegation in petition in *Norwich case*, 2 O. & H. 38, and *Stevens v. Tillett*, L. R. 6 C. P. 147.

<sup>2</sup> *Blackburn*, 1 O. & H. 199.

<sup>3</sup> *Stafford case*, 1 O. & H. 233.

other side to give evidence in order to explain the actual facts of the case. In that way these witnesses are valuable, but as a general rule they should not be made the staple of a case or be too much relied upon."

In several of the recent cases questions have arisen as to the production of telegrams. In the first case<sup>1</sup> in which the point was raised the chief clerk of the United Kingdom Telegraph Company was subpoenaed to produce "certain telegraphic messages received by the company at or about the time of the last election." These he declined to produce except upon the express order of the court. Mr. Justice Willes, the presiding judge, then stated that he was clearly of opinion that telegraph companies were not privileged to withhold the telegrams, and that he was bound to produce them.<sup>2</sup> In a subsequent case,<sup>3</sup> Blackburn, J., ordered the production of those telegrams only which bore upon the election,<sup>4</sup> and in an Irish case, Keogh, J., made a similar order, and said, in his judgment, as follows:—"Telegrams are nothing but electric letters, written by the candidates or their agents to electors. If such letters were in the pockets of the electors, or if copies of them were in the desks of the candidates, the petitioners of course would have a right to insist upon their production, and there is no reason why,

Production  
of tele-  
grams.

<sup>1</sup> *Coventry*, 1 O. & H. 104.

<sup>2</sup> This is in accordance with the ordinary rule as to the production of documents of a private and confidential description. Thus in *Hopkinson v. Lord Burghley*, L. R. 2 Ch. 447, the Lords Justices (overruling the decision of the Master of the Rolls) ordered the production of certain letters which had been marked "private" by the sender of them.

<sup>3</sup> *Bridgewater*, 1 O. & H. 114.

<sup>4</sup> Similarly in *Lee v. Angas*, L. R. 2 Eq. 63, where a *subp. d. t.* had been served upon a solicitor to produce all the papers, &c., relating to all dealings between his firm and the plaintiffs or defendants for a period of thirty years without specifying any particular documents required, it was held that such a *subp. d. t.* was too vague, and that the witness was entitled to refuse production.

because they are transmitted along a wire instead of being written on paper with pen and ink, they should have any greater protection."

But in the last case<sup>1</sup> which has been as yet tried the court took a somewhat different view of the matter. It appeared that an officer from the General Post-office<sup>2</sup> had been subpoenaed to produce not any specific telegram but *all* telegrams sent from or to Taunton during the four months previous. The officer consequently brought with him the telegrams required, but he declined to allow them to be examined unless under the order of the court, and he pointed out the inconvenience of the subpoena not being confined to specific telegrams. Mr. Justice Grove, by whom the petition was being heard, said that in his opinion the question was a large and grave one, and that he would consult the other election judges before deciding what course ought to be pursued. Having done so, he on a subsequent day said as follows:—"I have received an answer from my learned brethren whom I have consulted with reference to the production of the telegrams, and they coincide in the opinion which I rather intimated on Saturday, though I did not express a formal decision, that I decidedly ought not to interfere to compel the production of these telegrams, or even to say anything to the Post Office officers to procure their production. I do not wish to go into reasons for the decision, for this reason, namely, because I am not, by this decision, saying that cases might not arise where, upon strong specific grounds being shown, the judge

<sup>1</sup> *Taunton* decided January 26th, 1874.

<sup>2</sup> It may be observed that by 32 & 33 Vict. c. 73, s. 23, it is enacted that nothing in the Act shall have the effect of relieving any officer of the Post Office from any liability, which would, but for the passing of the Act, have attached to a telegraph company, or to any other company, or person, to produce in any court of law, when duly required so to do, any such written or printed message or communication.

might interpose his authority ; but all I say is that certainly the present is not such a case." It therefore appears that, as the question now stands, any future application to inspect telegrams must be decided on its own merits.

*Nature of the Inquiry.*

Although the trial of a petition is conducted in the same way as a case at Nisi Prius,<sup>1</sup> it is to a certain extent a quasi-criminal inquiry; for instance, it has been held that the Act<sup>2</sup> which makes stamps unnecessary in criminal proceedings applies to these trials.<sup>3</sup> The trial of a petition is a judicial not an inquisitorial inquiry,<sup>4</sup> and although the judge has the power of calling what witnesses he pleases,<sup>5</sup> still he is not bound to do more than decide the questions raised by the proceedings.<sup>6</sup> It was not the intention of the Act to convert the judge into a magistrate to institute a preliminary inquiry,<sup>7</sup> and the power to call witnesses was merely given him to enable him to follow up any clue which the evidence of either party might present, especially if he saw anything like collusion,<sup>8</sup> but he is not bound to make inquiries unless there is some ground of suspicion.<sup>9</sup>

*Adjournment after Commencement of Trial.*

The judge may, if he think fit, adjourn the trial after its commencement from time to time, and from any one place to any other place.<sup>10</sup> No formal

Adjourn-  
ment after  
commence-  
ment of  
trial.

<sup>1</sup> *Ante*, p. 1, n. (1).

<sup>2</sup> 17 & 18 V. c. 83, s. 27.

<sup>3</sup> *Per Willes, J.*, in the *Windsor case*, O. & H. 6.

<sup>4</sup> *Per Willes, J.*, *Windsor case*, O. & H. 7, and *per Grove, J.*, *Taunton case*, *Times Newspaper*, Jan. 27th, 1874.

<sup>5</sup> *Parl. El. Act*, s. 32, App. x.

<sup>6</sup> *Southampton case*, O. & H. 227.

<sup>7</sup> *Windsor case*, O. & H. 7.

<sup>8</sup> *Westbury case*, O. & H. 48.

<sup>9</sup> *Parl. Elec. Act*, s. 11 (12) App. vi. No case has as yet been adjourned, but in the *Penrynn case*, O. & H. 124, *Willes, J.*, intimated that the insufficiency of the particulars delivered

adjournment is necessary each day, but the trial is to be deemed adjourned, and may be continued from day to day until it is concluded.<sup>1</sup> If the judge who commences the trial is disabled by illness or otherwise, the trial may be recommenced and concluded by another judge.<sup>1</sup>

*Subpœna of Witnesses.*

**Subpœna of witnesses.** Witnesses whose attendance is required are subpœnaed in the ordinary way,<sup>2</sup> but if a witness, after having been subpœnaed, does not attend,<sup>3</sup> the judge has power to compel his attendance by an order under his hand, and any person refusing to obey such order will be guilty of contempt of court.<sup>4</sup> An order for that purpose may, in English and Irish cases, be drawn up in the form prescribed in the Rules.<sup>5</sup> A judge may also, as we have seen,<sup>6</sup> himself call any witnesses he pleases.<sup>4</sup>

*Indemnity to Witnesses.*

**Indemnity to witnesses.** The 26 Vict. c. 29, s. 7, and the Parliamentary Elections Act, s. 33, provide that no person who is called as a witness in an election petition shall be excused from answering any question relating to any corrupt practice connected with the election which forms the subject of inquiry,<sup>7</sup> on the ground was a ground for granting an adjournment at the cost of the petitioners; see, also, *Bristol case*, 2 O. & H. 28; and in the *Galway case*, 2 O. & H. 51, Keogh, J., made a similar intimation with regard to the non-attendance of witnesses.

<sup>1</sup> Rule 36 (English and Irish), App. xxix. There is no such rule as to Scotland.

<sup>2</sup> Parl. El. Act, s. 31, App. x.

<sup>3</sup> It appears that orders for the attendance of witnesses will only be granted after every reasonable attempt to serve them with subpoenas has failed. *Norwich*, O. & H. 8; *Waterford*, 2 O. & H. 3, 4; *Longford*, 2 O. & H. 12.

<sup>4</sup> Parl. El. Act, s. 32, App. x.

<sup>5</sup> Rule 41 (English and Irish), App. xxix. See rule 23 (Scotch) as to Scotland, App. xli.

<sup>6</sup> *Ante*, p. 45, note (4).

<sup>7</sup> This enactment does not extend to questions relating to corrupt practices committed at previous elections. *Stafford*, O. & H. 231; *Cashel*, O. & H. 287.

that the answer thereto may tend to criminate him; but if a witness truly answers every question relating to the matter as to which he shall be required to answer, and the answer to which may criminate him, he will be entitled to receive a certificate from the judge which will protect him in case he is indicted, or has an action brought against him.<sup>1</sup> But it is in the discretion of the judge<sup>2</sup> to grant or refuse the certificate, according as his answers are full or trustworthy, or the reverse.<sup>3</sup> If, however, a witness perjures himself, it is expressly provided that the certificate of indemnity shall not protect if he is indicted for such perjury.<sup>4</sup>

*Contempt of Court.*

In the event of its being necessary to commit <sup>Contempt of court.</sup> any person for contempt of court, a warrant for that purpose may, in English and Irish cases, be made out in the form given in the Rules.<sup>5</sup> It should be directed to the sheriff or other person having the execution of process of the Superior Courts, and shall be sufficient without further

<sup>1</sup> *Per Martin, B., in Beverley case, O. & H. 147.*

<sup>2</sup> In *R. v. Frice*, L. R. 6 Q. B. 411, it was held that a witness who answered a question truly might claim a certificate of indemnity as a matter of right, and that (at any rate in the case of commissioners appointed to inquire into corrupt practices) a mandamus would lie to compel them to grant it, if they refused. "There might, however," said Cockburn, C. J., "be difficulties in controlling the decision of an election judge."

<sup>3</sup> In the *Sligo case*, O. & H. 301, Keogh, J., refused a certificate on the ground that the disclosures of the witness had not been either full or trustworthy.

<sup>4</sup> As to this see *R. v. Buttell*, L. R. 1 C. C. R. 248. In this case it was held that the meaning of the proviso at the end of the 7th section "that no statement made by any person . . . before an election judge shall, except in cases of perjury, be admissible" as evidence against that person applied only to perjury committed before the election judge, and not to perjury in any other case.

<sup>5</sup> Rule 42 (English and Irish), App. xxx. There is no such rule among the Scotch Rules.

particularity, and shall and may be executed by the persons to whom it is directed.<sup>1</sup>

*Examination of Witness under Commission.*

**Examination of witness under commission.**

If a witness is too ill to attend and give evidence in Court, the judge may order him to be examined *viva voce* before the registrar of the court.<sup>2</sup> Counsel will be at liberty to attend and ask what questions they please, and a short-hand writer must also be present.<sup>3</sup> An application for this purpose will also be entertained if made to a judge in chambers.<sup>4</sup>

*Reserving points of law.*

**Reserving points of law.**

If it appear to the judge on the trial of a petition that any questions of law as to the admissibility of evidence<sup>5</sup> or otherwise require further consideration, he may reserve the question for the Court of Common Pleas,<sup>6</sup> in the same way as questions are usually reserved by a judge on a trial at Nisi Prius.<sup>7</sup> In that case the certificate to

<sup>1</sup> Rule 48 (English and Irish), App. **xxx**.

<sup>2</sup> This was done in the *Wallingford case*, 1 O. & H. 57.

<sup>3</sup> This is in accordance with Parl. El. Act, s. 24. App. viii.

<sup>4</sup> An application of this nature was granted by Hannen, J. in *Ogden v. Sidebottom*, 19 L. T. N. S. 703.

<sup>5</sup> In the *Galway case*, 2 O. & H. 52, Keogh, J., seems to have felt a difficulty about reserving a question of this sort.

<sup>6</sup> It appears that questions ought not to be reserved which may require the court to draw inferences of fact, and if such a question was to be reserved the court might refuse to decide it, and then the trial of the petition might have to be resumed at the original place of hearing: per Willes, J., *Coventry case, judgments*, p. 54. See also *per Monahan*, C. J., *Galway case, judgments*, Series II., p. 79, S. C., I. R. 6 C. L. 464, and *per O'Brien*, J., *Youghal case*, O. & H. 298. Points of law have been reserved in the following cases: *Britt v. Robinson*, L. R. 5 C. P. 503, *Youghal case*, I. R. 3 C. L. 530, *Galway case*, I. R. 6 C. L. 464. In the *Oldham case*, O. & H. 151—156, various points were reserved but not argued.

<sup>7</sup> The usual way to reserve a point is for the judge to state a special case upon which the parties can go to the court, *Bristol*, 2 O. & H. 29, *Galway*, 2 O. & H. 58. See form of statement of point reserved in the *Bristol case*, 23 L. T. N. S. 189.

be made to the Speaker shall not be granted until the question has been determined.<sup>1</sup>

*Decision of the Judge.*

At the conclusion of the trial,<sup>2</sup> and before informing the Speaker of the result<sup>3</sup> of a petition, the judge is to determine and publicly announce whether the member whose return or election is complained of, or if the seat is prayed,<sup>4</sup> if any and what other person, was duly returned or elected, or whether the election was void. This determination the judge shall certify in writing to the Speaker,<sup>5</sup> and if any charge of corrupt practice is made in the petition, he must also in addition to the certificate and at the same time, report upon such charge,<sup>6</sup> and he may also, if he thinks that the House of Commons ought to be informed of any matter which has arisen in the course of the trial, make a special report of such matter,<sup>7</sup> and the House of Commons may make such order in respect of such special report as they think proper.<sup>8</sup>

Decision of  
the Judge,  
when and  
how given.

<sup>1</sup> Parl. El. Act, s. 12, App. vii.

<sup>2</sup> Parl. El. Act, s. 11 (13), App. vi. This determination must be pronounced at the conclusion of the trial and at no other time; *per Willes, J., Coventry case Judgments*, 54.

<sup>3</sup> *Windsor case Judgments*, 211.

<sup>4</sup> It does not appear that a judge could determine any other person duly elected, unless the seat was prayed for that person.

<sup>5</sup> See certificates printed by House of Commons.

<sup>6</sup> Parl. El. Act, s. 11 (14), App. vi. It is in the discretion of the judge who he shall report as guilty of corrupt practices; it is extraneous to the right of the parties to apply to have any particular person reported; *per Keogh, J., Galway case*, 2 O. & H., 58. It may be observed that it is not obligatory upon the judge to report upon corrupt practices committed by agents, although as a fact they have almost invariably done so when such corrupt practices have been proved.

<sup>7</sup> Parl. El. Act, s. 11 (14), App. vii. Special reports were made in several cases after the election in 1868, e. g., *Bradford case*, O. & H. 30.

<sup>8</sup> *Ib.* s. 14, App. vii.

If the judge reports that corrupt practices have extensively prevailed, a commission for inquiry into such corrupt practices may be appointed under the Act of 15 & 16 Vict., c. 57.<sup>1</sup> It is expressly enacted that the determination of the judge as stated in his certificate, as well as the decision of the court upon a special case, shall be final to all intents and purposes.<sup>2</sup> Consequently, if a petitioner successfully prays a seat, he cannot be afterwards petitioned against.<sup>3</sup>

But neither the report which the judge is called upon to make under s. 11 (14), nor any special report which he may think proper to make under s. 11 (15), are in any way final or conclusive. Therefore, as we have already seen,<sup>4</sup> bribery by an unsuccessful candidate at an election which is afterwards held void, may be inquired into on a petition presented against him upon his being subsequently returned, although the charge of bribery at the void election had been before inquired into upon the recriminatory case set up with regard to that election, and reported upon by the judge as not substantiated.<sup>5</sup>

It is obligatory upon the House of Commons, upon being informed of the certificate, and report of the judge to carry out the decision of the certificate ministerially,<sup>6</sup> by ordering them to be entered in their journals, and by giving the necessary directions for confirming or altering the return,<sup>7</sup> or issuing a new writ, or carrying the determination into execution, as circumstances may require. It appears, however, that if it was dis-

<sup>1</sup> *Ib.* s. 15, App. vii.

<sup>2</sup> *Ib.* s. 11 (13), (16), App. vi.

<sup>3</sup> *Waygood v. James*, L. R. 4 C. P. 372.

<sup>4</sup> *Ante*, p. 41.

<sup>5</sup> *Stevens v. Tillet*, L. R. 6 C. P. 147.

<sup>6</sup> *Per Brett, J.*, in *Waygood v. James*, L. R. 4 C. P. 372.

<sup>7</sup> By 7 & 8 Will III. c 7, s. 5, the clerk of the crown is prohibited under a penalty from making any alteration in a return except by order of the House of Commons.

covered that the certificate of the judge had been obtained by fraud, the House of Commons, in such a case, would not be barred by the statutory enactment which makes them bound to carry out the certificate, but that the certificate might be treated as null and void,<sup>1</sup> and there might either be a fresh trial on the old petition, or it might be in the competency of the House of Commons to institute a second investigation of the matter under their general jurisdiction over returns of members.<sup>2</sup>

*Expenses of Trial.*

The travelling and other expenses of the judge, and all expenses properly incurred by the sheriff or mayor in receiving the judge<sup>3</sup> and providing him with necessary accommodation and a proper court,<sup>4</sup> will be defrayed by the Treasury.<sup>5</sup>

*Costs.*

All costs relating to a petition, except such as are otherwise provided for by the Parliamentary Election Act,<sup>6</sup> are to be defrayed by the parties in such manner and in such proportions as the court may determine, regard being had to the disallowance of any expense caused by vexatious conduct, unfounded allegations, or unfounded objections on the part of either party, regard being also had to the discouragement of needless expense.<sup>7</sup>

<sup>1</sup> *Per* Brett, J., in *Waygood v. James*, L. R. 4 C. P. 378.

<sup>2</sup> *Per* Willes, J., *ib.* p. 369.

<sup>3</sup> By Parl. El. Act, s. 28, App. x., it is enacted that the election judge shall be received at the place where he is to try the petition like a judge of assize, by the sheriff or mayor, according as the petition relates to a county or borough.

<sup>4</sup> By Parl. El. Act, s. 30, App. x., the expense of providing proper attendance for the judge, and by s. 34, the expenses of any witness called by the judge, are to be deemed to be part of the expenses of providing a court.

<sup>5</sup> Parl. El. Act, s. 28, App. x.

<sup>6</sup> As to this, see Parl. El. Act, ss. 28-30, 34, 35.

<sup>7</sup> Parl. El. Act, s. 41, App. xiii.

It was decided in the first petition<sup>1</sup> tried under the Parliamentary Elections Act, that, if there were no special circumstances in the case, the whole costs of a petition ought to be borne by the unsuccessful party, and this rule has hitherto been uniformly acted upon.<sup>2</sup> The special circumstances under which this rule has not been acted upon, and each party has been ordered to pay his own costs, are as follows:—

- (1) Where the petition, though unsuccessful, was held to have been fully justified.<sup>3</sup>
- (2) Where the petition was unsuccessful, but it was shown that proceedings took place in connection with the election, which, although not of such a nature as to render the election void, were illegal or otherwise objectionable.<sup>4</sup>
- (3) Where the petition has been successful, but the recriminatory case has also been successful.<sup>5</sup>
- (4) Where the petition is successful in unseating the respondent, but unsuccessful in the claim for the seat.<sup>6</sup>
- (5) Where the petition is successful, but personal charges are brought against the respondent, and fail.<sup>7</sup>

<sup>1</sup> *Windsor case*, O. & H. 7.

<sup>2</sup> See especially *Bridgewater*, O. & H. 116; *Hereford*, O. & H. 196.

<sup>3</sup> *Guildford*, O. & H. 15. *Warrington*, *ib.*, 45. *Westminster*, *ib.*, 96. *Coventry*, *ib.*, 111. *Galway*, *ib.*, 307, and for this reason it seems that each party had to pay their own costs in *Salford*, O. & H. 144. *Limerick*, *ib.*, 268.

<sup>4</sup> Such as employment of a mob, *Tamworth*, O. & H. 88. Extensive, though not corrupt, treating, *Carrickfergus*, *ib.*, 269. *S. W. Riding*, *ib.*, 216, employment of voters. *Londonderry*, *ib.*, 279.

<sup>5</sup> *Stafford*, 1 O. & H. 234. *Westbury*, 1 O. & H. 56. *Norwich*, 2 O. & H. 42.

<sup>6</sup> *Wexford*, 1. R. 6 C. L. *Norwich*, 1 O. & H. 12. See also *Waterford case*, 2 O. & H. 4.

<sup>7</sup> *Blackburn*, 1 O. & H. 205. See also *Westbury*, 1 O. & H. 56.

- (6) Where the petition is successful, but much time has been wasted in consequence of the case having been badly got up.<sup>1</sup>
- (7) Where the petition is successful, but the particulars delivered were recklessly inaccurate.<sup>2</sup>
- (8) Where costs were not applied for by either party.<sup>3</sup>

There seems, however, nothing to prevent the judge from making what order he pleases as to costs, whether they are applied for or not.

In some cases costs have been apportioned, and expenses which have been unnecessarily incurred have been ordered to be paid for by the party through whose fault they arose.<sup>4</sup>

#### *Taxation of Costs.*

Costs are to be taxed by the Master in English <sup>Taxation of</sup> and Irish cases,<sup>5</sup> and by the auditor of the Court <sup>costs.</sup> in Scotch cases,<sup>6</sup> upon the same principles as costs between attorney and client are taxed in a suit in the High Court of Chancery.<sup>7</sup> These officers should allow all costs reasonably incurred, but not "any extraordinary or unusual expenses incurred in consequence of over-caution or over-anxiety as to any particular case, or from considerations of

<sup>1</sup> *Wallingford*, 1 O. & H. 60. See also *per* *Blackburn*, J.  
19 L. T. N. S. 742.

<sup>2</sup> *Hereford*, 1 O. & H. 197. See also remarks of *O'Brien*, J., *Youghal*, *ib.* 295, and *Keating*, J., *Norwich*, 2 O. & H. 42.

<sup>3</sup> *Lichfield*, 1 O. & H. 29.

<sup>4</sup> *Londonderry*, 1 O. & H. 279; *Norwich*, *ib.* 12; *Westminster*, 1 O. & H. 96. See also *per* *Wilkes*, J., *Penryn*, *ib.* 128; *per* *Bramwell*, B., *Bristol*, 2 O. & H. 28; and *per* *Blackburn*, J., 19 L. T. N. S. 742.

<sup>5</sup> Rule 55 (English and Irish), App. xxxiii.

<sup>6</sup> Rule 34 (Scotch), App. xliii.

<sup>7</sup> Parl. El. Act, s. 41, App. xiii., as to what is the principle on which costs are taxed in Chancery. See *Hill v. Peel*, L. R. 5 C. P. 178, citing *Morgan and Davey on Costs*.

any special importance arising from the rank, position, wealth, or character of the respondents, or any special desire on their part to insure success."<sup>1</sup> As to counsel's fees, 100 guineas for the leader, and 75 guineas for the junior, was considered by the Court to be the proper amount as an average for ordinary cases; but it was also stated that no uniform standard of allowance ought to be set up, and that the Master ought to exercise his judgment and discretion in each case.<sup>2</sup> As to consultations, the Court considered that to allow only one consultation was to assimilate the practice and allowance on taxation in petitions too closely to that in ordinary actions at law, and that it is reasonable and proper that consultations should be held from time to time, and the fees for these consultations allowed according to the usual mode of charges in ordinary suits, and in addition to the refreshers for each day's attendance.<sup>3</sup>

With regard to subpoenas, they should not be issued the moment the petition is filed, but within such time as the Master in his discretion may in each case deem reasonable.<sup>4</sup>

#### *Recovery of Costs.*

Recovery of costs. Costs may be recovered in the same manner as the costs in an action at law,<sup>5</sup> or, as to English and Irish cases,<sup>6</sup> by execution issued upon the rule of court which orders the costs to be paid; or if payable by order of a judge, then by making such

<sup>1</sup> *Per Bovill, C. J.*, in *Hill v. Peel*, L. R. 5 C. P. p. 180. See also *Tillett v. Stracey*, *ib.* 185.

<sup>2</sup> *Ib.* p. 181.

<sup>3</sup> *Ib.* p. 182.

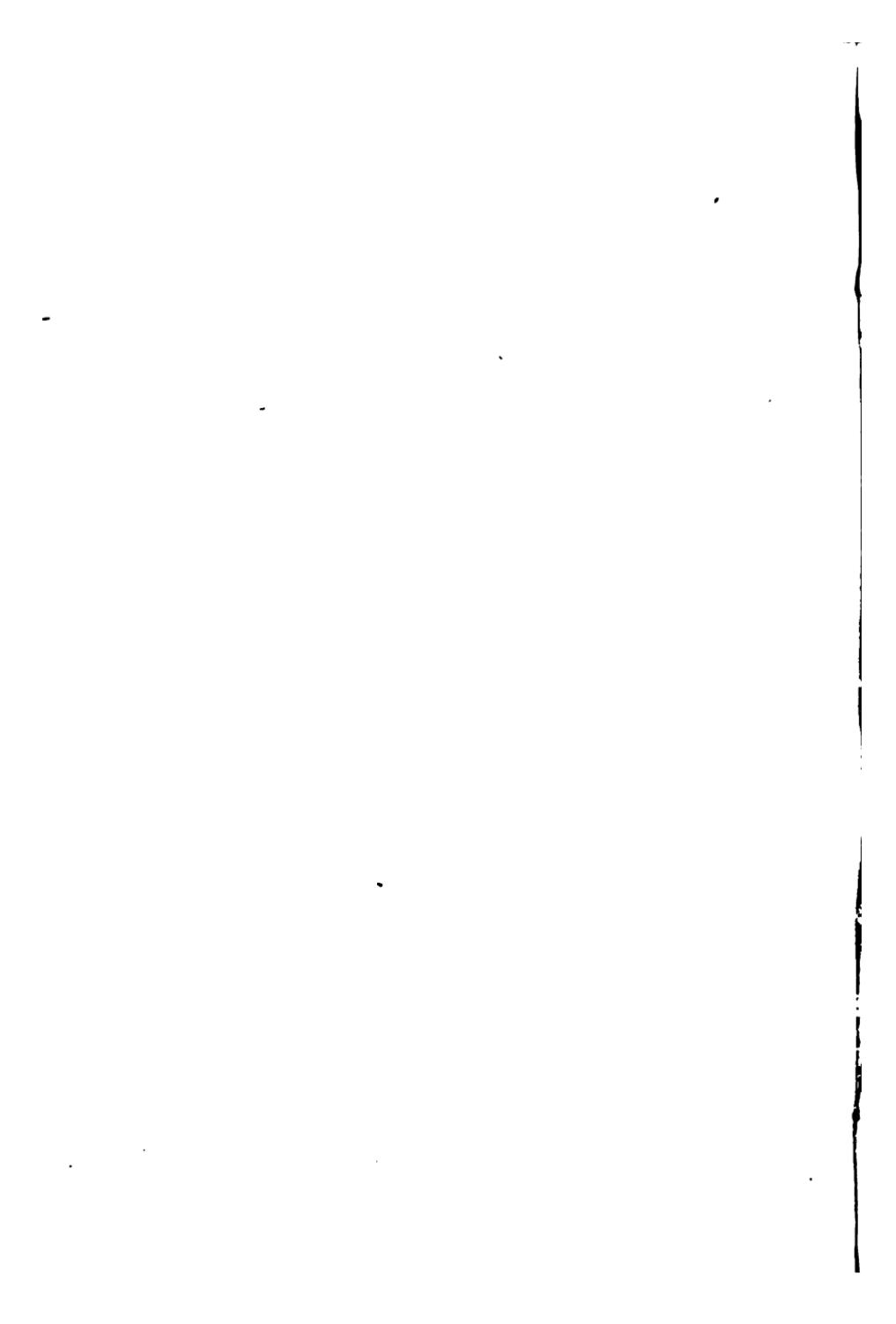
<sup>4</sup> *Per Bovill, C. J.*, in *Hughes v. Meyrick*, L. R. 5 C. P. 411. In *Waterford* case, 2 O. & H. 5, Hughes, B., refused to allow the costs of those witnesses who had been subpoenaed, but not examined.

<sup>5</sup> Parl. El. Act, s. 41, App. xiii.

<sup>6</sup> Rule 55 (English and Irish), App. xxxiii. There is no such Scotch rule.

order a rule of court in the ordinary way, and issuing execution upon such rule; or, in case there be money in the bank available, then to the extent of such money, by order of the Chief Justice upon a duplicate of the rule of court.<sup>1</sup>

<sup>1</sup> In *Adams v. Gower*, *Weekly Notes*, Feb. 5, 1870, p. 38, the Court refused to allow the deposit money to be paid out, as other persons might have claims on it besides.



## APPENDIX.

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31 & 32 Vict., c. 125.

*An Act for amending the Laws relating to Election petitions, and providing more effectually for the Prevention of corrupt Practices at Parliamentary Elections.*

[ 31st July, 1868.]

WHEREAS it is expedient to amend the laws relating to election petitions, and to provide more effectually for the prevention of corrupt practices at parliamentary elections:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

### *Preliminary.*

1. This Act must be cited for all purposes as "The Short Title Parliamentary Elections Act, 1868." of Act.

2. The expression "the court" shall, for the purposes Definition and Jurisdiction of Court. of this Act, in application to England, mean the Court of Common Pleas at Westminster, and in its application to Ireland the Court of Common Pleas at Dublin, and such court shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon as it would have if such petition were an ordinary cause within their jurisdiction.

3. The following terms shall in this Act have the meanings hereinafter assigned to them, unless there is some- Interpretation of thing in the context repugnant to such construction; (that Terms. is to say,)

"Metropolitan district" shall mean the City of London and the liberties thereof, and any parish or place <sup>tan Dis-</sup> subject to the jurisdiction of the Metropolitan Board <sup>trict."</sup> of Works:

"Election" shall mean an election of a member or "Election:" members to serve in parliament:

"County" shall not include a county of a city or county of a town, but shall mean any county, riding, parts, "County."

	or division of a county returning a member or members to serve in parliament :
"Borough:"	"Borough" shall mean any borough, university, city, place, or combination of places, not being a county as hereinbefore defined, returning a member or members to serve in parliament :
"Candidate:"	"Candidate" shall mean any person elected to serve in parliament at an election, and any person who has been nominated as or declared himself a candidate at an election :
"Corrupt Practices:"	"Corrupt practices" or "corrupt practice" shall mean bribery, treating, and undue influence, or any of such offences, as defined by act of parliament, or recognized by the common law of parliament :
"Rules of Court:"	"Rules of court" shall mean rules to be made as herein-after mentioned :
"Prescribed."	"Prescribed" shall mean "prescribed by the rules of court."
Provision as to Speaker.	4. For the purposes of this Act "Speaker" shall be deemed to include Deputy Speaker; and when the office of speaker is vacant the clerk of the House of Commons, or any other officer for the time being performing the duties of the clerk of the House of Commons, shall be deemed to be substituted for and to be included in the expression "the Speaker."

*Presentation and Service of Petition.*

To whom and by whom election petition may be presented.

5. From and after the next dissolution of parliament a petition complaining of an undue return or undue election of a member to serve in parliament for a county or borough may be presented to the Court of Common Pleas at Westminster, if such county or borough is situate in England, or to the Court of Common Pleas at Dublin, if such county or borough is situate in Ireland, by any one or more of the following persons :

- I. Some person who voted or who had a right to vote at the election to which the petition relates; or,
- II. Some person claiming to have had a right to be returned or elected at such election; or,
- III. Some person alleging himself to have been a candidate at such election :

And such petition is hereinafter referred to as an election petition.

Regulation-  
as to presen-  
tation of  
election  
petition.

6. The following enactments shall be made with respect to the presentation of an election petition under this Act :

- I. The petition shall be signed by the petitioner, or all the petitioners if more than one :

- II. The petition shall be presented within twenty-one days after the return has been made to the clerk of the Crown in Chancery in England, or to the clerk of the Crown and Hanaper in Ireland, as the case may be, of the member to whose election the petition relates, unless it question the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, in pursuance or in furtherance of such corrupt practices, in which case the petition may be presented at any time within twenty-eight days after the date of such payment :
- III. Presentation of a petition shall be made by delivering it to the prescribed officer or otherwise dealing with the same in manner prescribed :
- IV. At the time of the presentation of the petition, or within three days afterwards, security for the payment of all costs, charges, and expenses that may become payable by the petitioner—
  - (a.) to any person summoned as a witness on his behalf, or
  - (b.) to the member whose election or return is complained of (who is hereinafter referred to as the respondent),
 shall be given on behalf of the petitioner :
- V. The security shall be to an amount of one thousand pounds ; it shall be given either by recognizance to be entered into by any number of sureties not exceeding four, or by a deposit of money in manner prescribed, or partly in one way and partly in the other.

7. On presentation of the petition the prescribed officer shall send a copy thereof to the returning officer of the petition county or borough to which the petition relates, who shall forthwith publish the same in the county or borough, as the case may be.

8. Notice of the presentation of a petition under this Act, and of the nature of the proposed security, accompanied with a copy of the petition, shall, within the prescribed time, not exceeding five days after the presentation of the petition, be served by the petitioner on the respondent ; and it shall be lawful for the respondent, where the security is given wholly or partially by recognizance, within a further prescribed time, not exceeding five days from the date of the service on him of the notice, to object in writing to such recognizance, on the ground that the

Copy of  
petition  
after pre-  
sentation to  
be sent to  
returning  
officer.

Recogni-  
zance may  
be objected  
to.

sureties, or any of them, are insufficient, or that a surety is dead, or that he cannot be found or ascertained, from the want of a sufficient description in the recognizance or that a person named in the recognizance has not duly acknowledged the same.

Determination of objection to recognizance.

9. Any objection made to the security given shall be heard and decided on in the prescribed manner. If an objection to the security is allowed it shall be lawful for the petitioner, within a further prescribed time, not exceeding five days, to remove such objection, by a deposit in the prescribed manner of such sum of money as may be deemed by the court or officer having cognizance of the matter to make the security sufficient.

If on objection made the security is decided to be insufficient, and such objection is not removed in manner hereinbefore mentioned, no further proceedings shall be had on the petition; otherwise, on the expiration of the time limited for making objections, or, after objection made, on the sufficiency of the security being established, the petition shall be deemed to be at issue.

List of petitions at issue to be made.

10. The prescribed officer shall, as soon as may be, make out a list of all petitions under this Act presented to the court of which he is such officer, and which are at issue, placing them in the order in which they were presented, and shall keep at his office a copy of such list, hereinafter referred to as the election list, open to the inspection in the prescribed manner of any person making application.

Such petitions, as far as conveniently may be, shall be tried in the order in which they stand in such list.

*Trial of a Petition.*

Mode of trial of election petitions.

11. The following enactments shall be made with respect to the trial of election petitions under this Act:

I. The trial of every election petition shall be conducted before a puisne judge of one of Her Majesty's superior courts of common law at Westminster or Dublin, according as the same shall have been presented to the court at Westminster or Dublin, to be selected from a rota to be formed as hereinafter mentioned.

II. The Members of each of the courts of Queen's Bench, Common Pleas, and Exchequer in England and Ireland shall respectively, on or before the third day of Michaelmas term in every year, select, by a majority of votes, one of the puisne judges of such court, not being a member of the House of Lords, to be placed on the rota for the

trial of election petitions during the ensuing year.

III. If in any case the members of the said court are equally divided in their choice of a puisne judge to be placed on the rota, the Chief Justice of such court (including under that expression the Chief Baron of the Exchequer) shall have a second or casting vote.

IV. Any judge placed on the rota shall be re-eligible in the succeeding or any subsequent year.

V. In the event of the death or the illness of any judge for the time being on the rota, or his inability to act for any reasonable cause, the court to which he belongs shall fill up the vacancy by placing on the rota another puisne judge of the same court.

VI. The judges for the time being on the rota shall, according to their seniority, respectively try the election petition standing for trial under this Act, unless they otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement.

VII. Where it appears to the judges on the rota, after due consideration of the list of petitions under this Act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional judge or judges be appointed to assist the judges on the rota, each of the said courts (that is to say), the Court of Exchequer, the Court of Common Pleas, and Court of Queen's Bench, in the order named, shall, on and according to the requisition of such judges on the rota, select, in manner hereinbefore provided, one of the puisne judges of the court to try election petitions for the ensuing year; and any judge so selected shall, during that year, be deemed to be on the rota for the trial of election petitions:

VIII. Her Majesty may, in manner heretofore in use, appoint an additional puisne judge to each of the Courts of Queen's Bench, the Common Pleas, and the Exchequer in England:

IX. Every election petition shall, except where it raises a question of law for the determination of the court, as herein-after mentioned, be tried by one of the judges herein-before in that behalf mentioned, herein-after referred to as the judge sitting in open court without a jury.

X. Notice of the time and place at which an election

## ELECTION PETITIONS.

petition will be tried shall be given, not less than fourteen days before the day on which the trial is held, in the prescribed manner.

XI. The trial of an election petition in the case of a petition relating to a borough election shall take place in the borough, and in the case of a petition relating to a county election in the county: Provided always, that if it shall appear to the court that special circumstances exist which render it desirable that the petition should be tried elsewhere than in the borough or county, it shall be lawful for the court to appoint such other place for the trial as shall appear most convenient: provided also, that in the case of a petition relating to any of the boroughs within the Metropolitan district, the petition may be heard at such place within the district as the court may appoint.

XII. The judge presiding at the trial may adjourn the same from time to time and from any one place to any other place within the county or borough, as to him may seem expedient.

XIII. At the conclusion of the trial the judge who tried the petition shall determine whether the member whose return or election is complained of, or any and what other person, was duly returned or elected, or whether the election was void, and shall forthwith certify in writing such determination to the Speaker, and upon such certificate being given such determination shall be final to all intents and purposes.

XIV. Where any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the judge shall, in addition to such certificate, and at the same time, report in writing to the Speaker as follows :

- (a.) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice :
- (b.) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice :
- (c.) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively

prevailed at the election to which the petition relates.

XV. The judge may at the same time make a special report to the Speaker as to any matters arising in the course of the trial on account of which in his judgment ought to be submitted to the House of Commons.

XVI. Where, upon the application of any party to a petition made in the prescribed manner to the court, it appears to the court that the case raised by the petition can be conveniently stated as a special case, the court may direct the same to be stated accordingly, and any such special case shall, as far as may be, be heard before the court, and the decision of the court shall be final; and the court shall certify to the Speaker its determination in reference to such special case.

12. Provided always, that if it shall appear to the judge on the trial of the said petition that any question or questions of law as to the admissibility of evidence or otherwise require further consideration by the Court of Common Pleas, then it shall be lawful for the said judge to postpone the granting of the said certificate until the determination of such question or questions by the court, and for this purpose to reserve any such question or questions in like manner as questions are usually reserved by a judge on a trial at Nisi Prius.

13. The House of Commons, on being informed by the Speaker of such certificate and report or reports, if any, shall order the same to be entered in their journals, and shall give the necessary directions for confirming or altering the return, or for issuing a writ for a new election, or for carrying the determination into execution, as circumstances may require.

14. Where the judge makes a special report the House of Commons may make such order in respect of such special report as they think proper.

15. If the judge states in his report on the trial of an election petition under this Act that corrupt practices have, or that there is reason to believe that corrupt practices have, extensively prevailed in any county or borough at the election to which the petition relates, such statement shall for all the purposes of the Act of the session of the fifteenth and sixteenth years of the reign of her present Majesty, chapter fifty-seven, intituled "An Act to provide for more effectual inquiry into the existence of corrupt practices at elections of members to serve in parliament,"

have the same effect and may be dealt with in the same manner as if it were a report of a committee of the House of Commons appointed to try an election petition, and the expenses of any commission of inquiry which may be issued in accordance with the provisions of the said Act shall be defrayed as if they were expenses incurred in the registration of voters for such county or borough.

Report of Judge equivalent to Report of Election Committee.

16. The report of the judge in respect of persons guilty of corrupt practices shall for the purpose of the prosecution of such persons in pursuance of section nine of the Act of the twenty-sixth year of the reign of her present Majesty, chapter twenty-nine, have the same effect as the report of the election committee therein mentioned that certain persons have been guilty of bribery and treating.

Evidence of corrupt Practices how received.

17. On the trial of an election petition under this Act, unless the judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto received before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.

Acceptance of Office not to stop Petition.

18. The trial of an election petition under this Act shall be proceeded with notwithstanding the acceptance by the respondent of an office of profit under the Crown.

Prorogation of Parliament.

19. The trial of an election petition under this Act shall be proceeded with notwithstanding the prorogation of parliament.

*Proceedings.*

Form of Petition.

20. An election petition under this Act shall be in such form and state such matters as may be prescribed.

Service of Petition.

21. An election petition under this Act shall be served as nearly as may be in the manner in which a writ or summons is served, or in such other manner as may be prescribed.

Joint Respondents to Petition.

22. Two or more candidates may be made respondents to the same petition, and their case may for the sake of convenience be tried at the same time, but for all the purposes of this Act such petition shall be deemed to be a separate petition against each respondent.

Provision in Cases where more than one Petition is presented.

23. Where, under this Act, more petitions than one are presented relating to the same election or return, all such petitions shall in the election list be bracketed together, and shall be dealt with as one petition, but such petitions shall stand in the election list in the place where the last of such petitions would have stood if it had been the only petition presented, unless the court shall otherwise direct.

Shorthand Writer to

24. On the trial of an election petition under this Act the shorthand writer of the House of Commons or his deputy

shall attend and shall be sworn by the judge faithfully and truly to take down the evidence given at the trial, and from time to time as occasion requires to write or cause the same to be written in words at length ; and it shall be the duty of such shorthand writer to take down such evidence, and from time to time to write or cause the same to be written at length, and a copy of such evidence shall accompany the certificate made by the judge to the speaker ; and the expenses of the shorthand writer shall be deemed to be part of the expenses incurred in receiving the judge.

attend Trial  
of Election  
Petition.

*Jurisdiction and Rules of Court.*

25. The judges for the time being on the rots for the trial of election petitions in England and Ireland may respectively from time to time make and may from time to time revoke and alter, general rules and orders (in this Act referred to as the rules of Court), for the effectual execution of this Act and of the intention and object thereof, and the regulation of the practice, procedure, and costs of election petitions, and the trial thereof, and the certifying and reporting thereon.

Rules to be  
made by  
Court.

Any general rules and orders made as aforesaid shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act.

Any general rules and orders made in pursuance of this section shall be laid before parliament within three weeks after they are made, if parliament be then sitting, and if parliament be not then sitting, within three weeks after the beginning of the then next session of parliament.

26. Until rules of court have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which committees of the House of Commons have heretofore acted in dealing with election petitions shall be observed so far as may be by the court and judge in the case of election petitions under this Act.

Practice  
House of  
Commons to  
be observed.

27. The duties to be performed by the prescribed officer under this Act shall be performed by such one or more of the masters of the Court of Common Pleas at Westminster as may be determined by the chief justice of the said Court of Common Pleas, and by the master of the Court of Common Pleas at Dublin, and there shall be awarded to such masters respectively, in addition to their existing salaries, such remuneration for the performance of the duties imposed on them in pursuance of this Act as the chief justices of the said Courts of Common Pleas at Westminster and Dublin may respectively, with the consent of the commissioners of the Treasury, determine.

Perform-  
ance of  
Duties by  
prescribed  
Officer.

*Reception, Expenses, and Jurisdiction of Judge.*

**Reception of Judge.** 28. The judge shall be received at the place where he is about to try an election petition under this Act with the same state, so far as circumstances admit, as a judge of assize is received at an assize town; he shall be received by the sheriff in the case of a petition relating to a county election, and in any other case by the mayor, in the case of a borough having a mayor, and in the case of a borough not having a mayor by the sheriff of the county in which the borough is situate, or by some person named by such sheriff.

The travelling and other expenses of the judge, and all expenses properly incurred by the sheriff or by such mayor or person named as aforesaid in receiving the judge and providing him with necessary accommodation and with a proper court, shall be defrayed by the commissioners of the Treasury out of money to be provided by parliament.

**Power of Judge.** 29. On the trial of an election petition under this Act the judge shall, subject to the provisions of this Act, have the same powers, jurisdiction, and authority as a judge of one of the superior courts and as a judge of assize and nisi prius, and the court held by him shall be a court of record.

**Attendance on Judge.** 30. The judge shall be attended on the trial of an election petition under this Act in the same manner as if he were a judge sitting at nisi prius, and the expenses of such attendance shall be deemed to be part of the expenses of providing a court.

*Witnesses.*

**Summons of Witnesses.** 31. Witnesses shall be subpoenaed and sworn in the same manner as nearly as circumstances admit as in a trial at nisi prius, and shall be subject to the same penalties for perjury.

**Judge may summon and examine Witnesses.** 32. On the trial of an election petition under this Act the judge may, by order under his hand, compel the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court. The judge may examine any witness so compelled to attend or any person in court although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by a judge such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

33. The provisions of the seventh section of the Act of the session of the twenty-sixth and twenty-seventh years of the reign of Her present Majesty, chapter twenty-nine, relating to the examination and identity of witnesses, shall apply to any witness appearing before a judge on the trial of an election petition under this Act, in the same manner as in the case of a trial before a committee of the House of Commons before the passing of this Act, and the certificate shall be given under the hand of the judge.

34. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this Act, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to such person by a certificate under the hand of the judge or of the prescribed officer, and such expenses if the witness was called and examined by the judge shall be deemed part of the expenses of providing a court, and in other cases shall be deemed to be costs of the petition.

*Withdrawal and Abatement of Election Petitions.*

35. An election petition under this Act shall not be withdrawn without the leave of the court or judge upon special application, to be made in and at the prescribed manner, time, and place.

No such application shall be made for the withdrawal of a petition until the prescribed notice has been given in the county or borough to which the petition relates of the intention of the petitioner to make an application for the withdrawal of his petition.

On the hearing of the application for withdrawal any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be substituted as a petitioner for the petitioner so desirous of withdrawing the petition.

The court or judge may, if it or he think fit, substitute as a petitioner any such applicant as aforesaid; and may further, if the proposed withdrawal is in the opinion of the court or judge induced by any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in such security the original petitioner shall be liable to pay the costs of the substituted petitioner.

If no such order is made with respect to the security given on behalf of the original petitioner, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds

Indemnity  
to Wit-  
nesses.

Expenses of  
Witnesses.

Withdrawal  
of Petition  
and Substi-  
tution of  
new Peti-  
tioners.

with his petition, and within the prescribed time after the order of substitution.

Subject as aforesaid a substituted petitioner shall stand in the same position as nearly as may be, and be subject to the same liabilities as the original petitioner.

If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

Where there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

Court to report to the Speaker circumstances of Withdrawal.

36. In every case of the withdrawal of an election petition under this Act the court or judge shall report to the speaker whether in its or his opinion the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, and if so the circumstances attending the withdrawal.

Abatement of Petition.

37. An election petition under this Act shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred.

On the abatement of a petition the prescribed notice of such abatement having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge, in and at the prescribed manner, time, and place, to be substituted as a petitioner.

The court or judge may, if it or he think fit, substitute as a petitioner any such applicant who is desirous of being substituted and on whose behalf security to the same amount is given as is required in the case of a new petition.

Admission in certain cases of Voters to be Respondents.

38. If before the trial of any election petition under this Act any of the following events happen in the case of the respondent; (that is to say,) )

- (1.) If he dies :
- (2.) If he is summoned to parliament as a peer of Great Britain by a writ issued under the great seal of Great Britain :
- (3.) If the House of Commons have resolved that his seat is vacant :
- (4.) If he gives in and at the prescribed manner and time notice to the court that he does not intend to oppose the petition :

notice of such event having taken place shall be given in the county or borough to which the petition relates, and within the prescribed time after the notice is given any person who might have been a petitioner in respect of the election to which the petition relates may apply to the court or judge to be admitted as a respondent to oppose the petition, and such person shall on such application be admitted accordingly, either with the respondent, if there be a respondent, or in place of the respondent; and any number of persons not exceeding three may be so admitted.

39. A respondent who has given the prescribed notice that he does not intend to oppose the petition shall not be allowed to appear or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the House of Commons until the House of Commons has been informed of the report on the petition, and the court or judge shall in all cases in which such notice has been given in the prescribed time and manner report the same to the Speaker of the House of Commons.

40. Where an election petition under this Act complains of a double return and the respondent has given notice to the prescribed officer that it is not his intention to oppose the petition, and no party has been admitted in pursuance of this Act to defend such return, then the petitioner if there be no petition complaining of the other member returned on such double return, may withdraw his petition by notice addressed to the prescribed officer, and upon the receipt of such notice the prescribed officer shall report the fact of the withdrawal of such petition to the Speaker, and the House of Commons shall thereupon give the necessary directions for amending the said double return by taking off the file the indenture by which the respondent so declining to oppose the petition was returned, or otherwise as the case may require. [Provided always, that this section shall not apply to Ireland.]\*

*Costs.*

41. All costs, charges, and expenses of and incidental to the presentation of a petition under this Act, and to the proceedings consequent thereon, with the exception of such costs, charges, and expenses as are by this Act otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the court or judge may determine, regard being had to the disallowance of any costs, charges, or expenses which may, in the

\* The words within brackets are repealed by the Ballot Act, 1872. See Schedule 4 of that Act.

opinion of the court or judge, have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are or not on the whole successful.

The costs may be taxed in the prescribed manner but according to the same principles as costs between attorney and client are taxed in a suit in the High Court of Chancery, and such costs may be recovered in the same manner as the costs of an action at law, or in such other manner as may be prescribed.

Recogni-  
zance, when  
to be  
estreated.

42. If any petitioner in an election petition presented under this Act neglect or refuse for the space of six months after demand to pay to any person summoned as a witness on his behalf, or to the respondent any sum certified to be due to him for his costs, charges, and expenses, and if such neglect or refusal be, within one year after such demand, proved to the satisfaction of the court of elections, in every such case every person who has entered into a recognizance relating to such petition under the provisions of this Act shall be held to have made default in his said recognizance, and the prescribed officer shall thereupon certify such recognizance to be forfeited, and the same shall be dealt with in England in manner provided by the Act of the third year of the reign of King George the Fourth, chapter forty-six, and in Ireland in manner provided by "The Fines Act (Ireland), 1851."

*Punishment of corrupt Practices.*

Punishment  
of Candi-  
date guilty  
of Bribery.

43. Where it is found, by the report of the judge upon an election petition under this Act that bribery has been committed by or with the knowledge and consent of any candidate at an election, such candidate shall be deemed to have been personally guilty of bribery at such election, and his election, if he has been elected, shall be void, and he shall be incapable of being elected to and of sitting in the House of Commons during the seven years next after the date of his being found guilty ; and he shall further be incapable during the said period of seven years—

- (1.) Of being registered as a voter and voting at any election in the United Kingdom ; and
- (2.) Of holding any Office under the Act of the Session of the fifth and sixtieth years of the reign of His Majesty King William the Fourth, chapter seventy-six, or of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, or any municipal office ; and

(3.) Of holding any judicial office, and of being appointed and of acting as a justice of the peace.

44. If on the trial of any election petition under this Act any candidate is proved to have personally engaged at the election to which such petition relates as a canvasser or agent for the management of the election, any person knowing that such person has within seven years previous to such engagement been found guilty of any corrupt practice by any competent legal tribunal or been reported guilty of any corrupt practice by a committee of the House of Commons, or by the report of the judge upon an election petition under this Act, or by the report of commissioners appointed in pursuance of the Act of the Session of the fifteenth and sixteenth years of the reign of Her present Majesty, chapter fifty-seven, the election of such candidate shall be void.

45. Any person, other than a candidate, found guilty of bribery in any proceeding in which after notice of the charge he has had an opportunity of being heard, shall, during the seven years next after the time at which he is so found guilty, be incapable of being elected to and sitting in parliament; and also be incapable—

- (1.) Of being registered as a voter and voting at any election in the United Kingdom; and
- (2.) Of holding any office under the Act of the session of the fifth and sixth years of the reign of His Majesty King William the Fourth, chapter seventy-six, or of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, or any municipal office; and
- (3.) Of holding any judicial office, and of being appointed and of acting as a justice of the peace.

46. For the purpose of disqualifying, in pursuance of the thirty-sixth section of the "The Corrupt Practices Prevention Act, 1854," a member guilty of corrupt practices, other than personal bribery within the forty-third section of this Act, the report of the judge on the trial of an election petition shall be deemed to be substituted for the declaration of an election committee, and the said section shall be construed as if the words "reported by a judge on the trial of an election petition" were inserted therein in the place of the words "declared by an election committee."

47. If at any time after any person has become disqualified by virtue of this Act, the witnesses, or any of them, on whose testimony such person shall have so become disqualified, shall, upon the prosecution of such person, be

Penalty for employing corrupt Agent.

Disqualification of persons of Bribery.

Amendment of the Law relating to the Disqualification of Candidates for corrupt Practices.

Removal of Disqualification on Proof that Disqualification.

cation was procured by Perjury. convicted of perjury in respect of such testimony, it shall be lawful for such person to move the court to order, and the court shall, upon being satisfied that such disqualification was procured by reason of perjury, order, that such disqualification shall thenceforth cease and determine, and the same shall cease and determine accordingly.

*Miscellaneous.*

Returning Officer may be sued for neglecting to return any Person duly elected.

48. If any returning officer wilfully delays, neglects, or refuses duly to return any person who ought to be returned to serve in parliament for any county or borough, such person may, in case it has been determined on the hearing of an election petition under this Act that such person was entitled to have been returned, sue the officer having so wilfully delayed, neglected, or refused duly to make such return at his election in any of Her Majesty's Courts of Record at Westminster, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit; provided such action be commenced within one year after the commission of the Act on which it is grounded, or within six months after the conclusion of the trial relating to such election.

Calculation of time.

49. In reckoning time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving shall be excluded.

Contro-verted Elec-tions to be tried under Act.

50. From and after the next dissolution of parliament no election or return to parliament shall be questioned except in accordance with the provisions of this Act, but until such dissolution, elections and returns to parliament may be questioned in manner heretofore in use.

Returning Officer if complained of to be Respondent.

Petition complaining of no Re-turn.

51. Where an election petition under this Act complains of the conduct of a returning officer, such returning officer shall for all the purposes of this Act, except the admission of respondents in his place, be deemed to be a respondent.

52. A petition under this Act complaining of no return may be presented to the court, and shall be deemed to be an election petition within the meaning of this Act, and the court may make such order thereon as they think expedient for compelling a return to be made, or may allow such petition to be heard by the judge in manner herein-before provided with respect to ordinary election petitions.

Recrimina-tion when Petition for undue Re-turn.

53. On the trial of a petition under this Act complaining of an undue return and claiming the seat for some person, the respondent may give evidence to prove that the election of such person was undue in the same manner as if he had presented a petition complaining of such election.

54. From and after the next dissolution of parliament the Acts contained in the schedule hereto are repealed so far as relates to elections and petitions to the extent therein mentioned; provided that such appeal shall not affect the validity or invalidity of anything already done or suffered, or any offence already committed, or any remedy or proceeding in respect thereof, or the proof of any past act or thing.

55. The additional puisne judges appointed under this Act to each of the Courts of Queen's Bench, the Common Pleas, and the Exchequer in England shall, as to rank, salary, pension, attendant officers, jurisdiction, and all other privileges and duties of a judge, stand in the same position as the other puisne judges of the court to which he is attached.

Any puisne judge of the said courts appointed in pursuance of or after the passing of this Act shall be authorized to sit, and shall, when requested by the Lord Chancellor, sit as Judge of the Court of Probate and Court of Marriage and Divorce or of the Admiralty Court.

56. If upon a petition to the House of Commons, presented within twenty-one days after the return to the clerk of the crown in Chancery in England or to the clerk of the crown and Hanaper in Ireland, of a member to serve in parliament for any borough or county, or within fourteen days after the meeting of parliament, and signed by any two or more electors of such borough or county, and alleging that corrupt practices have extensively prevailed at the then last election for such borough or county, or that there is reason to believe that corrupt practices have there so prevailed, an address be presented by both Houses of Parliament, praying that such allegation may be enquired into, the Crown may appoint commissioners to inquire into the same, and if such commissioners in such case be appointed, they shall inquire in the same manner and with the same powers and subject to all the provisions of the statute of the fifteenth and sixteenth of Victoria, chapter fifty-seven.

57. Any person who at the time of the passing of this Act was entitled to practise as agent, according to the principles, practice, and rules of the House of Commons, in cases of election petitions and matters relating to election of members of the House of Commons, shall be entitled to practise as an attorney or agent in cases of election petitions and all matters relating to elections before the court and judges prescribed by this Act: Provided, that every such person so practising as aforesaid shall, in respect of such practice and everything relating thereto, be subject to the jurisdiction and orders of the Court as if he

Provision as to payment of additional Judges and remuneration of Judges for duties to be performed under this Act.

Commiss-  
ions of In-  
quiry into  
corrupt  
Practices.

Agents  
practising  
in Cases of  
Election  
Petitions.

were an attorney of the said Court: And, further, provided, that no such person shall practise as aforesaid until his name shall have been entered on a roll to be made and kept, and which is hereby authorized to be made and kept, by the prescribed officer in the prescribed manner.

Application  
of Act to  
Scotland.

58. The provisions of this Act shall apply to Scotland, subject to the following modifications:

- I. The expression "the court" shall mean either division of the Inner House of the Court of Session, and either of such divisions shall have the same powers, jurisdiction, and authority with reference to an election petition in Scotland, and the proceedings thereon, which by this Act are conferred on the Court of Common Pleas at Westminster with respect to election petitions in England :
- II. The expression "county" shall not include a county of a city, but shall mean any county or division of a county, or any combination of counties, or of counties and portions of counties, returning a member to serve in parliament :
- III. The expression "borough" shall mean any university or universities, or any city, town, burgh, or district of cities, towns, or burghs, returning a member or members to serve in parliament :
- IV. "Recognizance" shall mean a bond of caution with usual and necessary clauses :
- V. The trial of every election petition in Scotland shall be conducted before a judge of the court of Session, to be selected from a rota to be formed as hereinafter mentioned :
- VI. The judges of the Court of Session shall, on or before the first day of the winter session in every year, select, by a majority of votes, two of the judges of such court, not being members of the House of Lords, to be placed on the rota for the trial of election petitions during the ensuing year :
- VII. If in any case the judges of the said court are equally divided in their choice of a judge to be placed on the rota, the lord president shall have a second or casting vote :
- VIII. Any judge placed on the rota shall be re-eligible in the succeeding or any subsequent year :
- IX. In the event of the death or illness of any judge for the time being on the rota, or his inability to act for any reasonable cause, the judges shall fill up the vacancy by placing on the rota another judge :

- X. The judges for the time being on the rota, shall according to their seniority, respectively try the election petitions standing for trial under this Act, unless they otherwise agree among themselves, in which case the trial of each election petition shall be taken in manner provided by such agreement :
- XI. Where it appears to the judges on the rota, after due consideration of the list of petitions under this Act for the time being at issue, that the trial of such election petitions will be inconveniently delayed unless an additional judge or judges be appointed to assist the judges on the rota, the judges of the Court of Session shall, on and according to the requisition of such judges on the rota, select in manner hereinbefore provided, a judge to try election petitions for the ensuing year ; and any judge so selected shall during that year be deemed to be on the rota for the trial of election petitions :
- XII. The duties to be performed by the prescribed officer under this Act with reference to election petitions in Scotland shall be performed by such one or more of the principal clerks of session as may be determined by the lord president of the Court of Session ; and there shall be awarded to such principal clerk or clerks, in addition to their existing salaries, such remuneration for the performance of the duties imposed on them in pursuance of this Act as the said lord president may, with the consent of the commissioners of the Treasury, determine :
- XIII. The judge shall be received at the place where he is about to try an election petition under this Act in the same manner and by the same authorities, as far as circumstances admit, as a judge of the Court of Justiciary is received at a circuit town, and he shall be attended by such officer or officers as shall be necessary :
- XIV. The travelling and other expenses of the judge, and of the officer or officers in attendance upon him, and all expenses properly incurred in providing the judge with a proper court shall be defrayed by the commissioners of the Treasury out of money to be provided by parliament :
- XV. On the trial of an election petition under this Act, the judge shall, subject to the provisions of this Act, have the same powers, jurisdictions,

and authority as a judge of the Court of Session presiding at the trial of a civil cause without a jury:

XVI. The principles of taxation of costs as between attorney and client in a suit in the High Court of Chancery shall in Scotland mean the principles of taxation of expenses as between agent and client in the Court of Session:

XVII. Any of Her Majesty's courts of record at Westminster shall in Scotland mean the Court of Session in Scotland:

XVIII. In lieu of the provisions for the estreating of a recognizance under an election petition, the prescribed officer shall, when otherwise competent under the provisions of this Act, certify that the conditions contained in the bond of caution have not been fulfilled, and it shall then be competent for the party or parties interested to register the said bond, and do diligence upon it as accords of law.

Duration of Act. 59. This Act shall be in force until the expiration of three years from the passing of such Act, and to the end of the then next session of parliament.

## SCHEDULE.

Date of Act.	Title of Act.	Extent of Repeal.
4 & 5 Vict. c. 57	An Act for the Prevention of Bribery at Elections.	The whole Act.
5 & 6 Vict. c. 102	An Act for the better Discovery and Prevention of Bribery and Treating at the Election of Members of Parliament.	The whole Act.
11 & 12 Vict. c. 98 . . . .	An Act to Amend the Law for the Trial of Election Petitions.	The whole Act.
26 Vict. c. 29 .	An Act to amend and continue the Law relating to corrupt Practices at Elections of Members of Parliament.	Section 8.
28 Vict. c. 8 .	An Act to amend "The Election Petitious Act, 1848," in certain Particulars.	The whole Act.

## ENGLAND.

*General Rules\* made by Sir Samuel Martin, Knight, one of the Barons of the Exchequer; Sir James Shaw Willes, Knight, one of the Justices of the Common Pleas; and Sir Colin Blackburn, Knight, one of the Justices of the Queen's Bench; the Judges for the time being for the Trial of Election Petitions in England,† pursuant to "The Parliamentary Elections Act, 1868."*

Petition where to be presented. 1. The presentation of an election petition shall be made by leaving it at the office of the master nominated by the Chief Justice of the Common Pleas; and such master or his clerk shall (if required) give a receipt, which may be in the following form:—

Received on the                    day of                   , at the master's office, a petition touching the election of A. B., a member for                   , purporting to be signed by [insert the names of Petitioners].

C. D., Master's Clerk.

With the petition shall also be left a copy thereof for the master to send to the returning officer, pursuant to section 7 of the Act.

What statements the petition shall contain. 2. An election petition shall contain the following statements:—

I. It shall state the right of the petitioner to petition within section 5 of the Act.

II. It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

Petition to be divided into paragraphs. 3. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject; and every paragraph shall be numbered consecutively; and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the court or a judge.

Prayer of Petition. 4. The petition shall conclude with a prayer, as, for instance, that some specified person should be declared duly returned or elected, or that the election should be declared

\* These rules are made pursuant to the power contained in s. 25 of the Parliamentary Election Act, and were laid before Parliament on Dec. 15, 1868. By the above-named section it is enacted that they "shall be of the same force as if they were enacted in the body of the Act."

† The rules made by the Irish election judges are *verbatim* the same as the English rules.

void, or that a return may be enforced (as the case may be), and shall be signed by all the petitioners.

5. The following form, or one to the like effect, shall be <sup>Form of</sup> Petition sufficient :—

In the Common Pleas.

"The Parliamentary Elections Act, 1868."

Election for [*state the place*], holden on the  
day of <sup>A.D.</sup>

The petition of A., of [or of A., of  
, and B., of <sup>as the case</sup>  
*may be*], whose names are subscribed.

- I. Your petitioner, A., is a person who voted [or had had a right to vote, *as the case may be*] at the above election [or claims to have a right to be returned at the above election; *or was a candidate at the above election*], and your petitioner, B. [*here state in like manner the right of each petitioner*].
- II. And your petitioners state that the election was holden on the day of A.D., when A. B., C. D., and E. F. were candidates, and the returning officer has returned A. B. and C. D. as being duly elected.
- III. And your petitioners say that [*here state the facts and grounds on which the Petitioners rely*]. Wherefore your petitioners pray that it may be determined that the said A. B. was not duly elected or returned, and that the election was void [*or that the said E. F. was duly elected and ought to have been returned, or as the case may be*.]

(signed) A.  
B.

6. Evidence need not be stated in the petition, but the Particulars court or a judge may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial, in the same way as in ordinary proceedings in the Court of Common Pleas, and upon such terms, as to costs and otherwise, as may be ordered.

7. When a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election or return shall, six days before the day appointed for trial, deliver to the master and also at the address (if any) given by the petitioners and respondent, as the case may be, a

Notice to be given when votes ob-  
jected to on scrutiny.

list of the votes intended to be objected to, and of the heads of objection to each such vote ; and the master shall allow inspection and office copies of such lists to all parties concerned ; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the court or judge, upon such terms to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

Notice to be given of Evidence to be offered on Recriminatory Case.

8. When the respondent in a petition under the Act, complaining of an undue return, and claiming the seat for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 53rd section of the Act, such respondent shall, six days before the day appointed for trial, deliver to the master, and also at the address (if any) given by the petitioner, a list of the objections to the election upon which he intends to rely ; and the master shall allow inspection and office copies of such lists to all parties concerned ; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the court or judge, upon such terms as to amendments of the list, postponement of the inquiry, and payment of costs, as may be ordered.

Name of Attorney or Agent of Petitioners to be left with Master.

9. With the petition petitioners shall leave at the office of the master a writing, signed by them or on their behalf, giving the name of some person entitled to practise as an attorney or agent in cases of election petitions whom they authorize to act as their agent, or stating that they act for themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to them may be left ; and if no such writing be left or address given, then notice of objection to the recognizances, and all other notices and proceedings may be given by sticking up the same at the master's office.

Any Member may leave with Master name of his Attorney or Agent.

10. Any person returned as a member may at any time after he is returned send or leave at the office of the master a writing signed by him or on his behalf, appointing a person entitled to practise as an attorney or agent in cases of election petitions, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office at which notices may be left ; and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the master's office.

Master to enter names in which he shall enter all addresses and the names of

agents given under either of the preceding rules, which of Attorneys or Agents in a book shall be open to inspection by any person during office hours.

12. The master shall upon the presentation of the petition forthwith send a copy of the petition to the returning officer, pursuant to section 7 of the Act, and shall therewith send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed; and also of the name of the respondent's agent, and the address, if any, given as prescribed; and the returning officer shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the returning officer, shall be paid by the petitioner or person moving in the matter, and shall form part of the general cost of the petition.

13. The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

14. Where the respondent has named an agent or given an address, the service of an election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless a judge, on an application made to him not later than five days after the petition is presented on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, including when practicable service upon an agent for election expenses, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable.

15. In case of evasion of service the sticking up a notice in the office of the master of the petition having been presented stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

16. The deposit of money by way of security for payment of costs, charges and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of, "The Parliamentary Elections Act, 1868, Security Fund," which shall be vested in and drawn upon, from time to time, by the Chief Justice of the Common Pleas for the time being, for the purposes for which security is required.

by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the master's office.

Master to enter amount of Security in a book.

17. The master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered, from time to time, the amount and the petition to which it is applicable.

Security for costs by Recognition.

18. The recognizance as security for costs may be acknowledged before a judge at chambers or the master in town, or a justice of the peace in the country.

There may be one recognizance acknowledged by all the sureties, or separate recognizances by one or more, as may be convenient.

Form of Recognition.

19. The recognizance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the day of , in the year of our Lord, 18 , before me [name and description] came A. B., of [name and description as above prescribed] and acknowledged himself [or severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of one thousand pounds [or the following sums] (that is to say) the said C. D., the sum of £ , the said E. F., the sum of £ , the said G. H., the sum of £ and the said G. K., the sum of £ , to be levied on his [or their respective] goods and chattels, land and tenements, to the use of our said Sovereign Lady the Queen, Her heirs, and successors.

The condition of this recognizance is that if [here insert the names of all the petitioners and if more than one, add, or any of them] shall well and truly pay all costs, charges and expenses, in respect of the Election Petition signed by him [or them] relating to the [here insert the name of the borough or county] which shall become payable by the said petitioner [or petitioners, or any of them] under "The Parliamentary Elections Act, 1868," to any person or persons, then this recognizance to be void, otherwise to stand in full force.

(Signed)

[Signature of Sureties.]

Taken and acknowledged by the above-named [names of sureties] on the day of at , before me.

C. D.

A Justice of the Peace [or as the case may be].

20. The recognizance or recognizances shall be left at the master's office, by or on behalf of the petitioner in like manner as before prescribed for the leaving of a petition forthwith after being acknowledged.

21. The time for giving notice of any objection to a recognizance under the 8th section of the Act, shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service.

22. An objection to the recognizance must state the grounds of ground or grounds thereof, as that the sureties or any, and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognizance has not duly acknowledged the same.

23. Any objection made to the security shall be heard and decided by the master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

24. Such hearing and decision may be either upon affidavit or personal examination of witnesses or both, as the master or judge may think fit.

25. If by order made upon such summons the security be declared sufficient, its sufficiency shall be deemed to be established within the meaning of the 9th section of the said Act, and the petition shall be at issue.

26. If by order made upon such summons an objection be allowed and the security be declared insufficient, the master or judge shall in such order state what amount he deems requisite to make the security sufficient; and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

27. The cost of hearing and deciding the objections made to the security given shall be paid as ordered by the master or judge, and in default of such order shall form part of the general costs of the petition.

28. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognizance with the master there be also left with the master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorized to take, or before some person authorized to take affidavits in the Court of Common Pleas, that he is seised or possessed of real or

personal estate, or both, above what will satisfy his debts of the clear value of the sum for which he is bound by his recognizance, which affidavit may be as follows :

In the Common Pleas.

" Parliamentary Elections Act, 1868."

I, A. B., of [as in recognizance] make oath and say that I am seized and possessed of real [or personal] estate above what will satisfy my debts of the clear value of £  
Sworn, &c.

Order for costs how enforced.

Election lists, what to contain.

Time and place of Trial of Petitions, how fixed.

Notice of Trial, how given.

Form of notice.

29. The order of the master for payment of costs shall have the same force as an order made by a judge, and may be made a rule of the Court of Common Pleas, and enforced in like manner as a judge's order.

30. The master shall make out the election list. In it he shall insert the name of the agents of the petitioners and respondent, and the addressees to which notices may be sent, if any. The list may be inspected at the master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed " Parliamentary Elections Act, 1868."

31. The time and place of the trial of each election petition shall be fixed by the judges on the rota, and notice thereof shall be given in writing by the master by sticking notice up in his office, sending one copy by the post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the sheriff, or in case of a borough having a mayor, to the mayor of that borough, 15 days before the day appointed for the trial.

The sheriff or mayor, as the case may be, shall forthwith publish the same in the county or borough.

32. The sticking up of the notice of trial at the office of the master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of, or relating to, the copy or copies thereof to be sent as already directed.

33. The notice of trial may be in the following form :—

" Parliamentary Elections Act, 1868."

Election petition of county [or borough] of

Take notice that the above petition [or petitions] will be tried at on the day of and on such other subsequent days as may be needful.

Dated the day of

Signed, by order, A. B.,  
The Master appointed under the above Act.

34. A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the sheriff or mayor, as the case may be, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the sheriff or mayor.

35. In the event of the judge not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned to the ensuing day, and so from day to day.

36. No formal adjournment of the court for the trial of an election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded; and in the event of the judge who begins the trial being disabled by illness or otherwise, it may be recommenced and concluded by another judge.

37. The application to state a special case may be made by rule in the Court of Common Pleas when sitting, or by a summons before a judge at chambers, upon hearing the parties.

38. The title of the court of record held for the trial of an election petition may be as follows:—

Court for the trial of an election petition for the [county of or borough of as may be] between petitioner and respondent, and it shall be sufficient so to entitle all proceedings in that court.

39. An officer shall be appointed for each court for the trial of an election petition, who shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He by himself, or in case of need his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

40. The reasonable costs of any witness shall be ascertained by the registrar of the court, and the certificate allowing them shall be under his hand.

41. The order of a judge to compel the attendance of a person, as a witness, may be in the following form:—

Court for the trial of an election petition [complete the title of the court] the day of to A. B. [describe the person] you are hereby required



over the proceedings under "The Parliamentary Elections Act, 1868," as a judge at chambers in the ordinary proceedings of the superior courts, and such questions and matters shall be heard and disposed of by one of the judges upon the rota, if practicable, and if not, then by any judge at chambers.

45. Notice of an application for leave to withdraw a petition shall be in writing, and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient :—

" Parliamentary Elections Act, 1868."

County [or borough] of petition of [state  
petitioners] presented day of

The petitioner proposes to apply to withdraw his petition upon the following ground [here state the ground] and prays that a day may be appointed for hearing his application.

Dated this day of

(Signed)

46. The notice of application for leave to withdraw shall be left at the master's office.

47. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the returning officer, who shall make it public in the county or borough to which it relates, and shall be forthwith published by the petitioner in at least one newspaper circulating in the place.

The following may be the form of such notice :—

" Parliamentary Elections, Act, 1868."

In the election petition for in which is petitioner and respondent.

Notice is hereby given, that the above petitioner has on the day of lodged at the master's office, notice of an application to withdraw the petition, of which notice the following is a copy [set it out].

And take notice that, by the rule made by the judges, any person who might have been a petitioner in respect of the said election, may within five days after publication by the returning officer of this notice, give notice in writing of his intention on the hearing, to apply for leave to be substituted as a petitioner.

(Signed)

to attend before the above court at [place] on the day of at the hour of [or forthwith, *as the case may be*] to be examined as a witness in the matter of the said petition, and to attend the said court until your examination shall have been completed.

As witness my hand,

A. B.,

Judge of the said Court.

Form of  
warrant of  
commital  
for con-  
tempt.

42. In the event of its being necessary to commit any person for contempt, the warrant may be as follows :—

At a court holden on at for the trial of an election petition for the county [or borough] of before Sir Samuel Martin, Knight, one of the barons of Her Majesty's Court of Exchequer, and one of the judges for the time being for the trial of election petitions in England, pursuant to "The Parliamentary Elections Act, 1868."

Whereas A. B. has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof, the said court does therefore sentence the said A. B. for his said contempt to be imprisoned in the gaol for calendar months, and to pay to our Lady the Queen a fine of £ and to be further imprisoned in the said gaol until the said fine be paid; and the court further orders that the sheriff of the said county [or as the case may be], and all constables and officers of the peace of any county or place where the said A. B. may be found, shall take the said A. B. into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence; and the court further orders the said gaoler to receive the said A. B. into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

A. D.

Signed the day of  
S. M.

Warrant by  
whom to be  
executed.

43. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the superior courts, as the case may be, and to all constables and officers of the peace of the county or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed, or any or either of them.

Interlocu-  
tory matters  
to be dis-  
posed of by

44. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control

over the proceedings under "The Parliamentary Elections Act, 1868," as a judge at chambers in the ordinary proceedings of the superior courts, and such questions and matters shall be heard and disposed of by one of the judges upon the rota, if practicable, and if not, then by any judge at chambers.

Judge at  
Chambers.

45. Notice of an application for leave to withdraw a petition shall be in writing, and signed by the petitioners or their agent.

Form of  
Notice of  
withdrawal  
of Petition.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:—

"Parliamentary Elections Act, 1868."

County [or borough] of \_\_\_\_\_ petition of [state  
petitioners] presented day of \_\_\_\_\_

The petitioner proposes to apply to withdraw his petition upon the following ground [here state the ground] and prays that a day may be appointed for hearing his application.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

(Signed)

46. The notice of application for leave to withdraw shall be left at the master's office.

Notice of  
withdrawal,  
where to be  
left.

47. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the returning officer, who shall make it public in the county or borough to which it relates, and shall be forthwith published by the petitioner in at least one newspaper circulating in the place.

The following may be the form of such notice:—

"Parliamentary Elections, Act, 1868."

In the election petition for \_\_\_\_\_ in which  
is petitioner and \_\_\_\_\_ respondent.

Notice is hereby given, that the above petitioner has on the \_\_\_\_\_ day of \_\_\_\_\_ lodged at the master's office, notice of an application to withdraw the petition, of which notice the following is a copy [set it out].

And take notice that, by the rule made by the judges, any person who might have been a petitioner in respect of the said election, may within five days after publication by the returning officer of this notice, give notice in writing of his intention on the hearing, to apply for leave to be substituted as a petitioner.

(Signed)

Application  
to be sub-  
stituted as  
Petitioner.

48. Any person who might have been a petitioner in respect of the election to which the petition relates, may within five days after such notice is published by the returning officer, give notice, in writing, signed by him or on his behalf, to the master, of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

Hearing of  
application  
for with-  
drawal.

49. The time and place for hearing the application shall be fixed by a judge, and whether before the Court of Common Pleas or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the judge directs.

Notice of  
abatement,  
and applica-  
tion to be  
substituted  
as peti-  
tioner.

50. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 37 of the said Act, shall be given by the party or person interested in the same manner as notice of an application to withdraw a petition, and the time within which application may be made to the court or a judge, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the court or a judge may allow.

Notice of  
vacation of  
Respond-  
ent's seat.

51. If the respondent dies or is summoned to parliament as a peer of Great Britain by a writ issued under the Great Seal of Great Britain, or if the House of Commons have resolved that his seat is vacant, any person entitled to be a petitioner under the Act in respect of the election to which the petitioner relates, may give notice of the fact in the county or borough by causing such notice to be published in at least one newspaper circulated therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the returning officer, and a like copy with the master.

Notice of  
non-opposi-  
tion of Peti-  
tion.

52. The manner and time of the respondent's giving notice to the court that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the master signed by the respondent six days before the day appointed for trial exclusive of the day of leaving such notice.

Such Notice  
to be pub-  
lished.

53. Upon such notice being left at the master's office, the master shall forthwith send a copy thereof by the post to

the petitioner or his agent, and to the sheriff or mayor, as the case may be, who shall cause the same to be published in the county or borough.

54. The time for applying to be admitted as a respondent in either of the events mentioned in the 38th section of the Act, shall be within ten days after such notice is given as hereinbefore directed, or such further time as the court or a judge may allow.

55. Costs shall be taxed by the master or, at his request, by any master of a superior court, upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered by execution issued upon the rule of court ordering them to be paid; or, if payable by the order of a judge, then by making such order a rule of court in the ordinary way and issuing execution upon such rule against the person by whom the costs are ordered to be paid, or in case there be money in the bank available for the purpose, then to the extent of such money by order of the chief justice of the Common Pleas for the time being, upon a duplicate of the rule of court.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act, and these rules shall be the same as those payable, if any, for like proceedings according to the present practice of the Court of Common Pleas,

56. The master shall prepare and keep a roll properly headed for entering the names of all persons entitled to practise as attorney or agent in cases of election petitions, and all matters relating to elections before the court and judges pursuant to the 57th section of the said Act, which roll shall be kept and dealt with in all respects as the roll of attorneys of the Court of Common Pleas, and shall be under the control of that court, as to striking off the roll and otherwise.

57. The entry upon the roll shall be written and subscribed by the attorney or agent, or some attorney authorised by him in writing to sign on his behalf, who shall therein set forth the name, description, and address in full.

58. The master may allow any person upon the roll of attorneys for the time being, and during the present year any person whose name or the name of whose firm is in the Law List of the present year as a parliamentary agent to subscribe the roll, and permission to subscribe the roll may be granted to any other person by the court or a judge upon affidavit, showing the facts which entitle the applicant to practise as agent according to the principles, practice, and rules of the House of Commons in cases of election petitions.

Substitution of new Respondent.

Taxation and recovery of Costs.

Roll of Election Attorneys and Agents.

Roll to be subscribed.

Who may subscribe Roll.

Notice of appointment of Agent.

59. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the master, of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

Formal objections.

60. No proceeding under "The Parliamentary Elections Act, 1868," shall be defeated by any formal objection.

Publication of Rules.

61. Any rule made or to be made in pursuance of the Act, if made in term time, shall be published by being read by the master in the Court of Common Pleas, and if made out of term, by a copy thereof being put up at the master's office.

Dated the 21st day of November, 1868.

(Signed) Samuel Martin,  
J. S. Willes,  
Colin Blackburn,

The judges for the trial of election petitions in England.

I certify that the above is a correct copy of the rules settled by the above-named judges, and which were read in the Court of Common Pleas on the 23rd November, 1868.

John Gordon,  
The prescribed officer.

*Additional general rule\* made by Sir Samuel Martin, Knight, one of the Barons of the Exchequer; Sir James Shaw Willes, Knight, one of the justices of the Common Pleas; and Sir Colin Blackburn, Knight, one of the justices of the Queen's Bench; the judges, for the time being, for the trial of election petitions in England, pursuant to "The Parliamentary Elections Act, 1868."*

That notice of the time and place of the trial of each Poll books election petition shall be transmitted by the master to the to be forwarded to Registrar by clerk of the crown. Treasury, and to the clerk of the Crown in Chancery; and that the clerk of the Crown in Chancery shall, on or before the day fixed for the trial, deliver, or cause to be delivered, to the registrar of the judge who is to try the petition, or his deputy, the poll books,† for which the registrar or his deputy shall give, if required, a receipt: and that the registrar shall keep in safe custody the said poll books until the trial is over, and then return the same to the Crown office.

Dated the 19th day of December, 1868.

Samuel Martin,  
J. S. Willes,  
Colin Blackburn,

The judges for the trial of election petitions  
in England.

15th April, 1869.

I certify that this is a correct copy of the rule made by the judges, whose names are hereunto subscribed.

J. Gordon,  
The officer appointed under the Act.

\* No such *additional* rule has been made for Ireland.

† By Ballot Act, rule 88, it is enacted that the term "poll book" when used in any previous enactment shall be construed to include any document forwarded to the clerk of the crown after an election in pursuance of that rule.

*Additional general rules\* made by the judges for the time being for the trial of election petitions in England, pursuant to "The Parliamentary Elections Act, 1868."*

Claims to money deposited to be disposed of by Court of Common Pleas.

1. All claims at law or in equity to money deposited or to be deposited in the Bank of England for payment of costs, charges, and expenses payable by the petitioners, pursuant to the 16th general rule, made the 21st of November, 1868, by the judges for the trial of election petitions in England, shall be disposed of by the Court of Common Pleas or a judge.

Money deposited to be returned when no longer needed.

2. Money so deposited shall, if and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned, or otherwise disposed of as justice may require, by rule of the Court of Common Pleas or order of a judge.

Such money when to be returned.

3. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for as the court or judge may require.

Such money to whom to be paid.

4. The rule or order may direct payment either to the party in whose name the same is deposited or to any person entitled to receive the same.

Such money to be drawn for by Chief Justice.

5. Upon such rule or order being made, the amount may be drawn for by the chief justice of the Common Pleas for the time being.

Draft of Chief Justice to be sufficient warrant to Bank of England.

6. The draft of the chief justice of the Common Pleas for the time being shall, in all cases, be a sufficient warrant to the Bank of England for all payments made thereunder.

Dated the 25th day of March, 1869.

Samuel Martin,

J. S. Willes,

Colin Blackburn,

The judges for the trial of election petitions in England.

15th April, 1869.

I certify that this is a correct copy of the rules made by the judges, whose names are hereunto subscribed.

J. Gordon,

The officer appointed under the Act.

\* No such *additional* rules have been made for Ireland.

## SCOTLAND.

*General rules of procedure in reference to election petitions in Scotland, made by Lord Cowan and Lord Jerviswoode, the judges for the trial of election petitions for the time being, pursuant to "The Parliamentary Elections Act, 1868."*

1. The presentation of an election petition shall be made by lodging it with the prescribed officer in manner following, viz., by leaving it during office hours at the office in the new register house of Mr. Archibald M'Neill, principal clerk of session of the first division, or of Mr. Harry Maxwell Inglis, principal clerk of session of the second division of the court, and such principal clerk or his assistant clerk, on receiving the same, shall mark thereon the date of lodgment, and, if desired, grant a receipt therefor, in terms of Schedule (A), hereunto annexed, or in similar terms.

2. An election petition shall set forth articulately in the form of a condescendence, according to the rules and practice of the Court of Session in ordinary proceedings—

- (1.) The right of the petitioner within the 5th section of the Act;
- (2.) The proceedings at and the result of the election;
- (3.) The facts relied on in support of the prayer of the petition; and

Shall conclude with a prayer (as for instance) that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced (as the case may be), and shall be signed by all the petitioners, where more than one; said petition being as near as may be in the form of schedule (B) hereunto annexed.

3. The security to be given on behalf of the petitioner, if by bond of caution, as prescribed by section 6 of the Act, on presentation of the petition, shall be by lodging a bond of caution to the effect required by the statute, in the hands of the principal clerk of session of the division of the court to which the petition shall be presented, and shall be as near as may be in the form of schedule (C).

And in the event of the required security being by a deposit of money, in whole or in part, such deposit shall be made with the Bank of Scotland, in an account to be opened with said bank, entitled "The Parliamentary Elections Act, 1868, Security Fund;" and lodging forthwith the deposit receipt for the amount with the said principal

Petition  
where to be  
presented.

What the  
Petition  
shall con-  
tain.

Security  
how to be  
given.

clerk, and which deposit shall stand as a security for the purpose for which security is required by the said Act, subject to the order of the judges, or either of them, or of the court.

Proceedings if Security is by bond of caution.

Time for giving notice of presentation of Petition. Notice of Objections when to be given and to whom.

Objections to Security.

Proceeding if objection sustained.

When seat claimed, list of votes objected to, when and to whom to be given.

Objections on recompromisatory case.

4. When security is tendered in the form of a bond of caution, lodged in the hands of the principal clerk as aforesaid, the sufficiency thereof must be attested to his satisfaction, as in the case of judicial bonds of caution, according to the practice of the court in similar cases.

5. The time for giving notice of the presentation of a petition, and of the nature of the proposed security, shall be five days, inclusive of the day of presentation.

6. The time for giving notice of any objections to the security under the 8th section of the Act, shall be five days from the date of service of the notice of the petition, and of the nature of the security, exclusive of the day of service; and the said objections shall be lodged with the principal clerk within said time, in writing, and shall set forth the specific ground or grounds thereof.

7. Objections, if any, to the security shall be forthwith heard and decided on by the principal clerk.

8. When any objection taken to the security is sustained, the principal clerk shall, in his deliverance to that effect, state the amount of deposit or additional deposit required to make the security sufficient, and the further prescribed time to remove the objection by such deposit, shall be five days from the date of the deliverance or order; it being in the power of the party within the said time to appeal to the judges, or either of them, as regards the amount ordered to be deposited by the principal clerk as aforesaid.

9. When a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of and the party defending the election or return shall, six days before the day appointed for trial, respectively deliver to the principal clerk a list of the voters intended to be objected to, and of the objections to each such voter, and the principal clerk shall allow inspection of such list to all parties concerned, and no evidence shall be allowed to be given against any vote, or in support of any objection which is not specified in the list, except by leave of the judges, or one of them, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs as may be ordered.

10. On the trial of a petition, complaining of an undue return, and claiming the seat for some person, when the respondent intends to give evidence to prove that the elec-

tion of such person was undue, under authority of the 53rd section of the Act, such respondent shall, six days before the day appointed for trial, deliver to the principal clerk a list of the objections to the election upon which he intends to rely ; and no evidence shall be allowed to be given by a respondent in support of any objection to the election not specified in the list, except by leave of the judges, or one of them, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

11. With the petition the petitioner shall leave at the office of the principal clerk a writing, signed by him or on his behalf, giving the name of some person entitled to practise as an agent in cases of election petitions, whom he authorises to act as his agent, or stating that he acts for himself, as the case may be, and in either case giving an address within three miles of the General Post Office, Edinburgh, at which notices, addressed to him, may be left ; and if no such writing be left or address given, it shall be sufficient to give notice of objection to the security, and all other requisite notices, by affixing the same to a notice board, in the office of the principal clerk, appropriated to proceedings under the Act, and headed "Parliamentary Elections Act, 1868."

12. Any person returned as a member may, at any time after he is returned, send or leave at the office of the principal clerk, a writing, signed by him or on his behalf, appointing a person, entitled to practise as an agent in cases of election petitions, to act as his agent, in case there shall be a petition complaining of his return and election, or stating that he intends to act for himself ; and in either case giving an address, within three miles from the said General Post Office, at which notices addressed to him may be left ; and in default of such notice being left within a week after service of the petition, it shall be sufficient to give the requisite notice by affixing the same to the notice board in the office of the principal clerk, provided for that purpose.

13. Where the respondent has named an agent, or given an address, the service of an election petition may be by delivery of a copy thereof to the agent, or by posting the same in a registered letter to the address given, so as to admit of its being delivered within the prescribed time, in the ordinary course of post.

In other cases the service must be personal on the respondent, unless the judges, or one of them, upon an application made not later than five days after the petition is presented, on affidavit showing what has been done, shall be satisfied that all reasonable effort has been made to effect

when to be given.

Petitioner to give name of Agent if any.

Member may give name of agent.

Service of petition may be upon respondent's agent, if any.

Names of agents to be kept by principal clerk.

Copy of petition to be sent to returning officer.

List of petitions how to be made, and where to be seen.

Time and place of trial of petition how to be fixed.

Notice of trial, how to be given.

personal service, and to cause the matter to come to the knowledge of the respondent, including (when practicable) service upon an agent for election expenses ; in which case the judges, or one of them, may order that what has been done shall be considered sufficient service, or may pronounce such other order as may be deemed just.

14. The principal clerk of each division of the court shall keep a book or books at his office, in which he shall enter all addressees and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours

15. The principal clerk, upon the presentation of the petition, shall forthwith send a copy thereof to the returning officer, pursuant to section 7 of the Act, and shall therewith send the name of the petitioner's agent, if any, and of the address, if any, given as prescribed, and also the name of the respondent's agent, and of the address, if any, given as prescribed ; and the returning officer shall forthwith publish these particulars along with the petition.

16. In preparing the list of election petitions, in each division of the court, in terms of section 10 of the statute, the principal clerk shall insert the names of the agents of the petitioners and respondents, if any, and the addressees to which notices may be sent ; which list may be inspected at the office of the principal clerk at any time during office hours, and shall be put up for that purpose upon the notice board, provided as aforesaid.

17. The time and place of the trial of an election petition shall be fixed by the judges, and notice thereof, in writing, shall be affixed by the principal clerk on the notice board in his office, and he shall send one copy thereof by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the returning officer, 15 days before the day appointed for the trial ; and the returning officer shall forthwith publish the same in the county, or burgh or burghs.

18. The affixing of the notice of trial on the notice board at the office of the principal clerk, shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed ; provided always, that at any time before the trial it shall be competent to any party interested to bring the matter before the judges or either of them, by whom the same shall be disposed of as may be deemed just.

19. Either of the judges may, from time to time, by Postpone-  
ment of order made upon the application of a party to the petition, trial.  
or by notice in such form as the judge may direct to be sent to the returning officer, postpone the beginning of the trial to such day as he may name, and such notice, when received, shall be forthwith made public by the returning officer.

20. The application to state a special case, as provided in section 11 of the statute, shall be made by motion to the Stateme t division of the court to which the petition has been pre-  
sented when sitting, or to the Lord Ordinary on the bills in time of vacation; on which motion the parties shall be heard and the application be disposed of, either by adjust-  
ment of a special case when allowed, or by refusal of the application.

21. At any court held for the trial of an election petition, Clerk of the an officer, to be named by the principal clerk, with the Court to be sanction of the judge, shall attend and discharge the duties appointed of clerk of court, in like manner and to like effect as the clerks of the Circuit Courts of Justiciary, and shall, subject to the direction and orders of the presiding judge, keep a record of the proceedings at the trial, which shall be conducted in like manner as trials are conducted in said Circuit Courts of Justiciary. And the record of the proceedings at the trial shall be transmitted by said officer to the office of the principal clerk.

22. When it shall appear to the judge on the trial to be Judge to expedient that the opinion of the court should be obtained, state special case. as provided for by the 12th section of the statute, the question or questions to be submitted to the court shall be stated in a special case adjusted at his sight.

23. For the trial of any election petition, the warrant for citation of witnesses shall be issued by the judge on the application of any party to the trial, and shall be, as near as may be, in the form prescribed in Schedule (D); and the reasonable costs of any witness shall be ascertained by the clerk of court, and upon a certificate under his hand allowing the same, the said costs shall, in the first instance, be paid by the party adducing such witness.

24. All interlocutory questions and matters, except as to the sufficiency of the security, shall be made upon application in writing, to be lodged at the office of the principal clerk, and shall be heard and disposed of by one of the judges, or, in their absence, by the Lord Ordinary on the bills.

25. Notice of an application for leave to withdraw a Withdrawal petition shall be in writing, and signed by the petitioner of petition

how effected.

or his agent. It shall state the ground on which the application for withdrawal is intended to be supported, and shall be, as near as may be, in the form of Schedule (E), and the same shall be lodged in the office of the principal clerk.

Notices of withdrawal to whom to be sent.

26. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by him to the respondent, and to the returning officer, who shall make it public in the county, or burgh or burghs, to which it relates, and shall be forthwith published by the petitioner in at least one newspaper circulating in the place; and such notice shall be, as near as may be, in the form of Schedule (F).

Substitution of new petitioner.

27. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the principal clerk of his intention to apply at the hearing to be substituted for the petitioner; but the want of informality of such notice shall not defeat such application if in fact made at the hearing, subject, however, to such order as to postponement of the hearing and costs as shall be just.

Application to withdraw petition by whom to be heard.

28. The time and place for hearing such application shall be fixed by one of the judges, or, in absence of such judge, by the Lord Ordinary on the bills, who shall hear and determine the same, unless he shall deem it expedient that the same shall be heard and determined by the division of the court to which the petition has been presented; but the time fixed for the hearing shall not be less than a week after the notice of intention to apply shall have been given to the principal clerk, by whom notice of such hearing shall be given to any person who shall have intimated to the principal clerk his intention to apply to be substituted for the original petitioner.

Notice of death of petitioner.

29. In the event of the death of the petitioner, or surviving petitioner, notice thereof, under section 37 of the said Act, shall be given by any person interested, in the same manner as notice of an application to withdraw a petition; and the time within which application may be made to the judges, or, in their absence, to the Lord Ordinary on the bills, to be substituted as a petitioner, shall be one calendar month, or such further time as, upon consideration of any special circumstances, the judge may allow.

If respondent's seat vacated notice may be given.

30. If the respondent dies, or is summoned to parliament as a peer of Great Britain, or if the House of Commons have resolved that his seat is vacant, any person entitled to be a petitioner under the Act, in respect of the election

to which the petition relates, may, as provided by the 38th section of the statute, give notice of the fact in the county, or burgh or burghs, by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf, with the returning officer, and a like copy with the principal clerk.

31. The manner and time of the respondent's giving notice that he does not intend to oppose the petition, shall be by leaving notice thereof in writing at the office of the principal clerk, signed by the respondent, six days before the day appointed for trial, exclusive of the day of leaving such notice; and upon such notice being left with the principal clerk, he shall forthwith send a copy thereof by post to the petitioner or his agent, and to the returning officer, who shall cause the same to be published in the county, or burgh or burghs, and the trial of the petition shall thereupon be postponed.

32. The time for applying to be admitted as a respondent in either of the events mentioned in the 38th section of the Act, shall be within ten days after such notice is given, as hereinbefore directed, or such further time as the judge may allow.

33. The senior principal clerk shall keep a roll, properly headed, for entering the names of all persons entitled to act as agents in cases of election petitions, and all matters relating to elections before the Court and the judges, pursuant to the 57th section of the Act.

The entry upon the roll shall be written and subscribed by the agent, or some one authorised by him, in writing, to subscribe the same on his behalf, and who shall therein set forth the name, description, and address in full, of such agent.

The principal clerk may allow any persons qualified to act as agents in the Supreme Courts, or those whose names stand in the "Register of Procurators," admitted in virtue of "The Procurators (Scotland) Act, 1865," to subscribe the roll; and permission to subscribe the same may be granted by the judges to other persons entitled, according to the principles, practice, and rules of the House of Commons, to act as agents, in cases of election petitions.

34. When any costs are awarded in the course of the proceedings under this Act, the award of the same shall be held equivalent to a finding of expenses in the Court of Session; and the account thereof, when lodged, shall be taxed by the auditor of court, and the taxed amount shall be decerned for by the judge, or by the court.

35. No proceeding under "The Parliamentary Elec- Effect of

formal objection." shall be affected or defeated by any objection of mere form.

The judges appoint the foregoing general rules, made in pursuance of the 25th section of "The Parliamentary Elections Act, 1868," to be laid before Parliament, as directed by the said Act, and also to be published on the walls of court in common form.

Dated the 27th day of November 1868.

(Signed) John Cowan,  
Charles Baillie,

The judges for the trial of election  
petitions in Scotland.

SCHEDULE (A).

*Parliamentary Elections Act, 1868.*

New Register House, Edinburgh.

Received, on the      day      at the office of  
                            principal clerk of session, a petition touching the  
election of a member of Parliament for the      signed  
by [Names of Petitioners].

A. B., assistant clerk of session.

SCHEDULE (B).

"*Parliamentary Elections Act, 1868.*"

Election for [state place] holden on the      day of  
18.

The petition of A. [name and designation], or of A.,  
B., and C. [names and designations], whose names are  
subscribed hereto.

Your petitioner A., who voted [or had a right to vote,  
as the case may be] at the above election [or claims to have  
had a right to be returned at the above election, or was a  
candidate at the above election], and your petitioner B.  
[here state in like manner the right of each petitioner].

And your petitioners state that the election was holden  
on the      day of      when A. B. and C. D. were  
candidates, and the returning officer has returned A. B. as  
being duly elected.

And your petitioners say that [here state the facts on which  
the petitioners rely].

Wherefore your petitioners pray that it may be deter-  
mined that the said A. B. was not duly elected or re-  
turned, and that the election was void [or that the said  
C. D. was duly elected, and ought to have been returned,  
as the case may be].

In respect whereof, &c.

[Signed by Petitioners.]

## SCHEDULE (C).

*"Parliamentary Elections Act, 1868."*

## Form of Bond of Caution.

We, *A. B. and C. D.* [names and designations], considering that a petition has been presented by *E. F.* to the division of the Court of Session, complaining of an undue return [*or* undue election, *as the case may be*], of *G. H.* as a member to serve in parliament for the county of \_\_\_\_\_ (or burgh of \_\_\_\_\_ or district of burghs) upon the \_\_\_\_\_ day of 18\_\_\_\_\_, and that by section 6 of "The Parliamentary Elections Act, 1868," it is provided that security for the payment of all costs, charges, and expenses that may become payable by the petitioner, in terms of the said Act, shall, on presentation of such petition, be given on behalf of the petitioners to the amount of £1,000; and that by the general rules of procedure made by the judges for the trial of election petitions under the said Act, it is prescribed that the security so to be given on behalf of the petitioners may be by lodging a bond of caution, in terms of the said Act; and seeing that we, the said parties, are willing to grant such bond, therefore we, the said parties, as cautioners, sureties, and full debtors for and with the said *E. F.*, petitioner, do hereby bind and oblige ourselves, conjunctly and severally, and our respective heirs, executors, and successors whomsoever, that the said *E. F.*, petitioner, shall make payment of all costs, charges, and expenses that may become payable by him to any person or persons, by virtue of any decree to be pronounced by the judge or judges for the trial of election petitions, or by the court; and that to the amount of £1,000 sterling, with one-fifth part more of liquidate penalty in case of failure; and we consent to the registration hereof in the books of council and session, that all necessary execution may pass hereon in due and competent form, as effects.—In witness whereof, &c.

## SCHEDULE (D).

*"Parliamentary Elections Act, 1868."*

## Form of Warrant for Citation of Witnesses.

## [Place and Date.]

Having considered the foregoing note [*to be given in by the applicant*] grants warrant to all officers of the law for citing the above-named persons [name them] to attend the court, for the trial of the election petition mentioned in the said note, to be held at \_\_\_\_\_ within [name court-house] on the \_\_\_\_\_ day of 18\_\_\_\_\_, at

## ELECTION PETITIONS.

o'clock forenoon [*or forthwith, as the case may be*], to be severally examined as witnesses in the matter of the said petition, and to attend the said court until their examination shall have been completed.

[Signed]

Judge of the said Court.

## SCHEDULE (E).

*Parliamentary Elections Act, 1868.*

County [*or burgh or burghs*] of Petition of  
presented the day of 18.  
The petitioner proposes to withdraw his petition on the following grounds [*state grounds*], and prays that a day may be appointed for hearing his application.

Dated the day of 18

[*To be signed by the petitioner or his agent.*]

## SCHEDULE (F).

*Parliamentary Elections Act, 1868.*

In the election petition for in which  
is petitioner, and is respondent.

Notice is hereby given that the above petitioner has, on the day of 18, lodged at the office of the principal clerk of session, notice of application to withdraw his petition, of which the following is a copy:—[*Set it out.*] And take notice, that by the Act and by the rules made by the judges, any person who might have been a petitioner, in respect of the said election, may, within five days after the said notice, give notice in writing of his intention, on the hearing, to apply for leave to be substituted as a petitioner.

[*Signed by the petitioner or his agent.*].

*Additional general rules of Procedure in reference to Election Petitions in Scotland, made by the judges on the rota for the trial of Election Petitions, pursuant to "The Parliamentary Elections Act, 1868."*

1. EVIDENCE need not be stated in the petition, but the Particulars court, or either of the election judges, may, on the requisition of the respondent, order the petitioner, within such period previous to the day fixed for the trial of the petition as may in the circumstances be deemed right, to lodge with the principal clerk, and to serve on the respondent or his agent, in the manner prescribed with regard to election petitions, a written statement of such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial.

2. No evidence shall be received at the trial except as to matters within the written statement ordered as aforesaid, and tending to support the same, or matters which have been already sufficiently set forth in the petition, without the leave of the court or the judge, and upon such conditions as to the postponement of the trial, payment of costs, and otherwise, as may be ordered.

The judges appoint the foregoing additional general rules, made in pursuance of the 25th section of "The Parliamentary Elections Act, 1868," to be laid before parliament, as directed by the said Act, and also to be published on the walls of court in common form.

Dated the 13th day of January, 1869.

(Signed) John Cowan,  
Charles Baillie,

The judges for the trial of Election Petitions in Scotland.

## FORMS OF PETITIONS.

*In the Common Pleas,*

THE PARLIAMENTARY ELECTIONS ACT, 1868.  
 ELECTION for the Borough of Sligo, holden on the 19th day  
 of November, in the Year of our Lord, 1868.

*The Petition of Michael Foley, of Water-lane, in the Borough  
 and County of Sligo, and Joseph Foley, of No. 8, Knox's-  
 street, in the Borough and County of Sligo, aforesaid,  
 whose names are subscribed.*

Petition  
 alleging  
 bribery,  
 treating,  
 and undue  
 influence,  
 but not  
 claiming the  
 seat.

1. Your petitioner, Michael Foley, is a person who voted at the above election, and your petitioner, Joseph Foley, is a person who voted at the above election.

2. And your petitioners state that the election was holden on the 19th day of November, in the year of our Lord 1868, when John Woulf Flanagan and Lawrence Edward Knox were candidates, and the returning officer has returned Lawrence Edward Knox as being duly elected.

3. And your petitioners say that before, during, and after the said election, the said Lawrence Edward Knox, by himself and his agents, and by other persons on his behalf, directly and indirectly, did give and lend, and agree to give and lend, and did offer and promise, and did offer and promise to procure, and did promise to endeavour to procure, money and other valuable considerations, and also offices, places, and employment to and for divers persons having votes at the said election, and to and for other persons on behalf of such voters, in order to induce such several voters to vote, or refrain from voting, at the said election; and did also corruptly make such gifts, loans, and promises of many and other valuable considerations, and of offices, places, and employments to divers voters at the said election, and to other persons on behalf of such voters, to induce such voters to abstain from voting, or on account of such voters having voted, or refrained from voting, at the said election; and did also make such gifts, loans, offers, and promises as aforesaid, to divers persons, in order to induce them to procure, or endeavour to procure, the return of the said Lawrence Edward Knox to serve in the present Parliament for the said borough of Sligo; and did also advance and pay, and cause to be paid, money to and to the use of

certain persons, with the intent that such money, or some part thereof, should be expended in bribery at the said election.

4. And your petitioners say that the said Lawrence Edward Knox, by himself and his agents, and other persons on his behalf, directly and indirectly, did pay and give, and agree to pay and give, or promise to pay and give, monies to divers persons, and to divers other persons having votes at the said election, on account of the conveyance of voters who voted at the said election, contrary to the provisions of the statute in that behalf.

5. And your petitioners say that before, during, and after the said election, the said Lawrence Edward Knox, by himself and his agents, and by and with other persons on his behalf, directly and indirectly, corruptly gave and provided, and did knowingly allow to be given and provided, and was accessory to the giving and providing of, and did wholly or in part pay for, meat, drink, entertainment, and provisions to and for divers persons, having votes at the said election, and to and for other persons on behalf of such voters, in order to be elected, and for being elected, and also for the purpose of corruptly influencing such persons and other persons to give, or refrain from giving, their votes at the said election; and did also so do to divers persons on account of such persons having voted, or refrained from voting, or being about vote, or refrain from voting at the said election.

6. And your petitioners say that the said Lawrence Edward Knox did, by himself and his agents, and by other persons on his behalf, directly and indirectly, make use of, and threaten to make use of, force, violence, and restraint, and inflicted and threatened the infliction of injury, loss, damage, and harm, and did in divers other ways practise intimidation on certain persons having votes at the said election, in order to induce or compel such persons to vote, or refrain from voting, or on account of such persons having voted, or refrained from voting, at the said election; and did, by abduction, duress, and other fraudulent devices and contrivances, impede, prevent, and otherwise interfere with the free exercise of the franchise of divers voters at the said election, and did thereby compel, induce, and prevail upon such voters either to vote, or refrain from voting, at the said election.

7. And your petitioners say that the said Lawrence Edward Knox, by himself and his agents, did influence and procure several persons to vote, and to record their votes, in favour of the said Lawrence Edward Knox, although the said persons were at the time of so voting, to

## ELECTION PETITIONS.

the knowledge of the said Lawrence Edward Knox and his agents, prohibited and disqualified by statute from voting.

Whereupon your petitioners pray that it may be determined that the said Lawrence Edward Knox was not duly elected or returned, and that the said election was null and void.

MICHAEL FOLEY.  
JOSEPH FOLEY.

Present when signed by the said petitioners,  
PAT KEIGHBON, J.P.

Received this 12th of December, 1868.  
C. G. BURKE.

## In the Common Pleas.

## THE PARLIAMENTARY ELECTION ACT, 1868.

## ELECTION for the County of Dublin.

*The Petition of the Honourable David Robert Plunket of Lower Pembroke-street, in the City of Dublin, whose name is subscribed.*

1. Your petitioner, the Honourable David Robert Plunket, is a person who claims to be returned at the above election.

2. And your petitioner states that the election was held on the 18th day of November, 1868, when Sir Arthur Edward Guinness, bart., Jonathan Pim, Honourable David Robert Plunket, and Sir Dominic Corrigan, were candidates; and the returning officer returned Sir Arthur Edward Guinness and Jonathan Pim as being duly elected.

3. And your petitioner says that the number of votes declared for each of the said candidates were respectively as follows:

Sir Arthur Edward Guinness	-	-	5,587
Jonathan Pim	-	-	5,586
Honourable David Robert Plunket	-	-	5,452
Sir Dominic Corrigan	-	-	5,379

And that the majority of votes declared by the returning officer in favour of the said Jonathan Pim over your petitioner was only an apparent and colourable majority, inasmuch as votes of divers persons were accepted and recorded on the poll in favour of the said Jonathan Pim who were not legally entitled to vote, and had no legal right to vote at the said election; and that a real majority of good and legal votes polled at the said election was in favour of your petitioner over the said Jonathan Pim.

4. And your petitioner says that, at the said election, divers persons were admitted to vote, and did vote at the said election for the said Jonathan Pim, who were not legally entitled to vote at such election, such persons having been, at the time of said election, disqualified from or incapable of voting, on the ground of legal incapacity, under by virtue of the statutable enactments then in force: or of having been, at the time of the said voting, so disqualified from voting on the ground of legal incapacity which had arisen subsequently to the time allowed for making out the list of voters from which the register of voters in force at the time of such election had been

Petition  
alleging  
that the  
majority  
was for  
divers rea-  
sons colour-  
able and  
apparent  
only, and  
claiming  
the seat.

## ELECTION PETITIONS.

formed; and that said persons, for the reasons aforesaid, were not entitled to vote at such election, and that the votes so admitted should be struck off from the poll.

5. And your petitioner says that divers persons voted for the said Jonathan Pim at such election who were, or had been, during such election or within six calendar months previous thereto, retained, hired, or employed for all or some of the purposes of such election for reward by, or on behalf of, some or one of said candidates at such election as agent, canvasser, clerks, or messengers, or in some other like employment; and that such votes were admitted and entered as good votes for the said Jonathan Pim, and ought to be struck off the poll.

6. That divers persons were admitted to vote, and thus votes were entered at such election for the said Jonathan Pim who were not legally qualified or entitled to, but who personated other persons duly entitled to vote at such election, whose names appeared upon the register of voters, and who did not vote at such election, and that such votes ought to be struck off the poll.

7. That many persons were admitted to vote, and did vote at the said election for the said Jonathan Pim who were guilty of the offence of bribery at such election within the meaning of the statutable enactments in that case made and provided, and that the votes so entered ought to be struck off the poll.

8. That many persons were admitted to vote, and did vote at the said election for the said Jonathan Pim, after the tests of the writ for holding such election, and before, during, and after said election, were treated, and made engagements, and received promises for being treated, and had been guilty of the offence of treating, within the meaning of the statutable enactments in that case made and provided, and that the votes so entered should be struck off the poll.

9. That by the ways and means aforesaid, and also by the bribery and treating hereinafter mentioned, the said Jonathan Pim obtained an apparent majority over your petitioner, whereas in truth and in fact your petitioner had a majority of legal votes over the said Jonathan Pim, and was duly elected by such majority of votes to serve as a member in the present parliament for the said county of the city of Dublin, and ought to have been returned as such member.

10. And your petitioner says that, before, during, and after the said election, the said Jonathan Pim, by himself,

his agents, and other persons on his behalf, directly and indirectly, did give and lend, and did agree to give and lend, and did offer and promise to procure, and to endeavour to procure money and other valuable consideration, and also offices, places, and employments to and for divers persons having votes at the said election, and to and for other persons on behalf of such voters, in order to induce such several voters to vote or refrain from voting at said election, and did also corruptly make such gifts, loans, promises of money, and other valuable considerations, and of offices, places, and employments to divers voters at the said election, and to other persons on their behalf, on account of such voters having voted or refrained from voting at such election ; and did also make such gifts, loans, offers, and promises, procurement, and agreements, as aforesaid, to divers persons, in order to induce them to procure, or endeavour to procure, the return of the said Jonathan Pim to serve in the present parliament for the said city of Dublin, and the votes of divers voters at such election.

11. And your petitioner says that, after the test of the writ for holding such election, the said Jonathan Pim, by himself, his agents, friends, and some other persons employed on his behalf, directly and indirectly, did give, present, and allow to divers persons having votes at such election, meat, drink, entertainment, and provisions ; and did, before, during, and after such election, promise, engage, and agree to do the same to and with such persons, in order to be elected, or for having been elected ; and that before, during, and after the said election, the said Jonathan Pim did corruptly, by himself and his agents, and by and with other persons on his behalf, directly and indirectly give and provide, and cause to be given and provided, and did knowingly allow to be given and provided, and did wholly or in part pay for the giving, and providing meat, drink, entertainment, and provision, to and for divers persons having votes at the said election, for the purpose of corruptly influencing of such persons, and other persons, to give or refrain from giving their votes at said election ; and did also so do to and for divers persons, on account of such persons having voted or refrained from voting at such election ; and that the said Jonathan Pim was, by himself and his agents, guilty of divers acts of bribery, treating, and corruption, at such election ; and that, by reason of

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the premises, the said election of the said Jonathan Pim  
was wholly null and void.

Wherefore your petitioner prays that it may  
be determined that the said Jonathan Pim was  
not duly elected and returned, and that his  
election was wholly null and void; and that  
your petitioner had a majority of legal votes  
over the said Jonathan Pim, and was duly  
elected by such majority of votes at such elec-  
tion, and ought to have been returned, and  
ought now to be declared the sitting member.

(Signed) DAVID ROBERT PLUNKET.

Fredk. Sutton, Agent.  
22, Harcourt-street, Dublin.

In the Common Pleas.

THE PARLIAMENTARY ELECTIONS ACT, 1868.

*Election for the county of Galway, holden on the third day of February one thousand eight hundred and seventy-two, being the day of nomination; the sixth day of February one thousand eight hundred and seventy-two, being the day of polling; and the eighth day of February, the day of the declaration of the poll.*

THE petition of Captain the Honourable William Le Poer Trench, of the regiment of royal engineers, of 32, Hyde Park Gardens, London, whose name is subscribed.

1. YOUR petitioner was a candidate at the above election.
2. Your petitioner states that the election was holden on the third day of February one thousand eight hundred and seventy-two, when Captain John Philip Nolan and your petitioner were candidates, and the returning officer has returned Captain John Philip Nolan as being duly elected.
3. The said Captain John Philip Nolan, both before and during the said election, by himself and his agents, corruptly provided meat, drink, and entertainment for divers persons, in order to his, the said Captain John Philip Nolan, being elected at such election, and did also, by himself and his agents, wrongfully provide meat, drink, and entertainment for divers persons, electors of the said county of Galway, for the purpose of corruptly influencing such persons to give him their votes at such election.
4. The said Captain John Philip Nolan, both during and after the said election, did by himself and his agents, wrongfully provide meat, drink, and entertainment for divers persons on account of their having voted at said election, and for divers other persons on account of their being absent at said election.
5. The said Captain John Philip Nolan, both before, during, and after the said election, was accessory to the giving of meat, drink, and entertainment, both to electors and other persons for the purpose of his being elected at the said late election, and for the purpose of corruptly influencing persons to vote at the said election, and did pay by himself and his agents the expenses incurred in providing meat, drink, and entertainment for divers persons for the purpose aforesaid, and was also accessory to the providing of meat, drink, and entertainment for divers persons

Petition  
alleging  
that the  
election was  
void on ac-  
count of  
general sys-  
tem of in-  
timidation,  
and that  
notice  
thereof had  
been given,  
and claim-  
ing the  
seat.

on account of their being about to vote at the said election, and did pay, or cause to be paid, expenses incurred in providing meat, drink, and entertainment for divers persons on account of their having voted at said election.

6. In the aforesaid respects, and also in other matters, the said Captain John Philip Nolan was guilty of corruptly treating, both by himself and his agents, in relation to the said election.

7. The said Captain John Philip Nolan did, by himself and by other persons on his behalf, and by great and organised mobs, make use of, and threaten to make use of, force, violence, and restraint upon divers electors of the said county of Galway, in order to induce or compel said persons to vote at the said election, or to refrain from voting, and did threaten the infliction, by himself and other persons, of injury, damage, harm, and loss upon divers electors, in order to induce and compel such persons to vote, or to refrain from voting, at the said election.

8. The said Captain John Philip Nolan, did by himself and his agents, practise in other manner intimidation upon divers persons, electors of the said county of Galway, in order to compel and induce them to vote, and to refrain from voting, at the said election.

9. In the matters aforesaid, and in divers other matters, the said Captain John Philip Nolan was, by himself and his agents, guilty of undue influence and intimidation in relation to the said election.

10. And more especially the said Captain John Philip Nolan was guilty of such intimidation and undue influence by and through certain Roman Catholic clergymen acting for and on behalf of the said Captain John Philip Nolan, who both by addressees from the altar during Divine service and by other means, threatened loss and damage, and in other manner practised intimidation upon several of the electors, members of the Roman Catholic persuasion, in order to induce them to vote, or to refrain from voting, at the said election.

11. That immediately preceding and upon the sixth day of February one thousand eight hundred and seventy-two, large mobs, consisting of friends and supporters of the said John Philip Nolan, assembled together in various parts of the said county, armed with sticks and divers others weapons, and did, by the general intimidation and terror which they caused and exercised, prevent many people from voting who would otherwise have voted for the petitioner; and did cause many people to vote for the said John Philip Nolan who would otherwise have voted for the

petitioner, and were anxious to do so if they could without risk to their persons and lives.

12. That on the said sixth February stones were thrown at, and blows struck, and physical violence offered to, the supporters of petitioner, in order to intimidate the electors who intended to vote for him, the petitioner, and by these means very many persons were prevented from voting for the petitioner who had intended and promised to do so, and many of them were compelled and coerced to vote for the said John Philip Nolan.

13. That the said election and return were procured and obtained by the improper exercise of the spiritual influence of the Roman Catholic clergy of the said county, applied and exerted in and throughout said county, and by denunciations directed by several of the said clergy against the supporters of the said petitioner, and threats of temporal and spiritual ruin directed by said clergy against the supporters and intended supporters of the petitioner.

14. That in addition to such public intimidation as aforesaid, many of the said Roman Catholic clergy privately exercised private undue influence and intimidation upon the electors by threats of temporal and spiritual evil, against those electors who should support the petitioner.

15. That the said election and return were procured and obtained by extensive and general violence and intimidation directed against the supporters of the petitioner so as to deter and to terrify, and which did in fact deter and terrify, persons from voting for the petitioner and to compel them to vote for the said John Philip Nolan.

16. And your petitioner says that by reason of the wrongful acts of the said Captain John Philip Nolan, and his agents aforesaid, and by reason of each of them, the said Captain John Philip Nolan was disqualified and incapacitated from being elected as a representative for the said county of Galway, and his election and return were illegal and void.

17. That said John Philip Nolan did before, during, and after said election, by himself and his agents, provide and furnish divers banners, ribbons, scarfs, cockades, and like marks of distinction for divers voters, who voted for said John Philip Nolan at said election, and also provided and furnished divers bands of music for the purpose, and with intent unduly to influence said election, and unduly to control the free action of divers voters thereat, and also paid divers sums of money for said banners, ribbons, scarfs, cockades, and like marks of distinction, and said bands of music.

mob, consisting of the friends and supporters of the said Benjamin Whitworth, who made an attack upon your petitioner and his proposer and seconder, and several other of his supporters, and by actual force expelled them from the court-house, inflicting severe bodily injuries upon them.

7. Upon the 20th day of November, 1868, being the polling-day, several thousand persons, friends and supporters of the said Benjamin Whitworth, armed, some with firearms and others with bludgeons and sticks, attacked voters who wished and had promised to vote for your petitioner, and inflicted very severe wounds and other bodily injuries upon them, and forcibly prevented many of them from recording their votes, and also attacked a large escort of cavalry, infantry, and police, who were acting as an escort for the protection of voters, and caused such terror and alarm in the minds of the electors, that many who had promised to vote for the said Francis Brodigan, and some who had promised to vote for your petitioner, were induced, by intimidation, to vote for the said Benjamin Whitworth ; and many electors who had promised to vote for your petitioner, and had come long distances to do so, and were most anxious to do so, if they could without risk of their lives, were deterred from going to the poll and recording their votes.

8. Your petitioner charges that the offence of undue influence at the said election was committed by the said Benjamin Whitworth and a great number of other persons, with his knowledge and consent ; and that an organised system of intimidation and violence was established by the said Benjamin Whitworth and his friends and agents ; and that the said Benjamin Whitworth could at any time have restrained the rioters from acts of violence if he had been willing to do so.

9. Your petitioner alleges that if the electors had been allowed to vote according to their wishes, without any intimidation or coercion, your petitioner would have been returned at the above election as a burgess to serve in Parliament for the said county of the town of Drogheada.

## HEADS OF OBJECTION.\*

In the Common Pleas.

“Parliamentary Election Act, 1868.”

Borough of

In the matter of the petition of A. B. petitioner  
and C. D. respondent.

The following is a list of voters who voted for C. D. at  
the last election for the borough of \_\_\_\_\_ and whose  
votes will be objected to on behalf of the petitioner with  
the several heads of objection distinguishable against the  
names of such voters.

## CLASS I.

Number on Register.	Names of Voters.	Grounds of Objection.
		Each of these voters will be objected to, on the ground that before, dur- ing, or after the said last election for the borough of _____, he was guilty of bribery, within the meaning of the statute of 17 & 18 Vict., c. 102, s. 2.

\* All grounds of objections to votes upon a scrutiny may be stated  
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